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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 70-54 ~~1092~~

VICTORY CARRIERS, INC., S. S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No.

VICTORY CARRIERS, INC., S. S. SAGAMORE HILL, and GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Victory Carriers, Inc., S. S. SAGAMORE HILL, and Gulf Stevedore Corp., pray that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit, reversing a decree rendered by the United States District Court for the Southern District of Alabama in Petitioners' favor.

I.

OPINIONS BELOW

A. This is a Petition to the United States Court of Appeals for the Fifth Circuit and specifically to its opinion dated September 16, 1970. This opinion has not yet been reported and is set out in full in Appendix A hereto.

B. The opinion of the District Court, dated July 15, 1969, is reported at 1970 A.M.C. 397 and is set out in full in Appendix B hereto.

II.

JURISDICTION

A. The judgment of the Court of Appeals for the Fifth Circuit was made and entered on September 16, 1970, and is printed in Appendix C hereto. On September 24, 1970, Petitioners filed timely motion for enlargement of time within which to petition for rehearing and on September 24, 1970, the Court of Appeals granted an enlargement of time to October 14, 1970, to file said petition for rehearing; on October 13, 1970, Petitioners filed in the Court of Appeals a petition for rehearing *en banc*, and alternatively, for rehearing. By order dated November 3, 1970, the Court of Appeals denied said petition, a copy of said order is appended hereto as Appendix D.

B. On November 9, 1970, Petitioners filed an application with the Court of Appeals for a stay of the mandate within which to make application to this Honorable Court for a writ of certiorari, and on November 17, 1970, the Court of Appeals granted a stay of the mandate to December 17, 1970; the clerk of the Court of Appeals letter advising of the stay of mandate is printed in Appendix E hereto.

C. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

III.

QUESTION PRESENTED

The Respondent herein, Bill Law, was a fork lift machine operator who was working exclusively on the dock moving cargo from a point of dockside storage to a point on the dock from which it was subsequently loaded onto the vessel S. S. SAGAMORE HILL. He was injured while working on the dock when the overhead, or "headache" rack, of the lift machine fell on him through no fault of the vessel.

The question presented for review on this Petition is:

Does the warranty of seaworthiness owed by a vessel extend to the operator of a fork lift machine who is operating the machine exclusively upon the dock moving cargo from its position of dockside storage to a point on the dock from which it is subsequently loaded onto the vessel and who is injured by reason of some fault in the lift machine and not by the vessel or its equipment?

IV.

STATUTES INVOLVED

The statute involved is 62 Stat. 496, 46 U.S.C. § 740, Extension of Admiralty Jurisdiction Act. This statute is printed in Appendix F hereto.

V.

STATEMENT OF THE CASE

The basis of federal jurisdiction in the Court of first instance, the United States District Court for the Southern District of Alabama, is that this is a case of admiralty and maritime jurisdiction under 28 U.S.C. § 1333 (1).

On December 11, 1967, the Respondent, Bill Law, was employed by the Petitioner Gulf Stevedore Corporation (hereinafter referred to as "Gulf") as a fork lift machine operator to move aircraft landing mats from their position of storage on the dock to a position on the dock near the Petitioner vessel S. S. SAGAMORE HILL, a distance of some fifty (50) feet. The landing mats were not loaded directly onto the vessel from the fork lift machine being operated by Respondent; he would set them down on the dock, and the mats would subsequently be loaded onto the vessel by other longshoremen by use of the vessel's gear and equipment. The fork lift machine did not at any time go on board the vessel, but remained exclusively upon the dock.

While the Respondent was transporting a bundle of mats from the dock storage area to the loading point, the overhead protection rack (commonly referred to as a "headache rack") of the lift machine came loose, fell and struck the Respondent. None of the vessel's gear and equipment were in any way involved with the loosening of the rack and the resulting accident.

Law subsequently filed a complaint in the United States District Court for the Southern District of Alabama against the Respondent Victory Carriers, Inc. (hereinafter referred to as "Victory"), as owner of the S.S. SAGAMORE HILL, alleging that his injuries were caused by the unseaworthiness of the vessel and the negligence of Victory. Victory answered Law's complaint and filed a third-party action against Gulf seeking indemnification from it.

Gulf then took the discovery deposition of Respondent Bill Law and subsequently moved for summary judgment on the principal ground that the warranty of seaworthiness did not extend to Respondent or to the fork lift machine which he was operating on the dock. Subsequently, Victory moved for a summary judgment in its favor on the same grounds, and Law filed a cross-motion for a summary judgment in his favor. On July 15, 1969, the District Court entered its order granting Gulf and Victory's motions for summary judgment and denying the cross-motion of Law.

In its opinion the District Court held that Bill Law "was not engaged in work for the service of the ship and is not covered by the warranty of seaworthiness." The District Court further held that: "The Plaintiff was not engaged in the *actual* loading of the vessel at the time of the accident. It is easy to say that he was assisting or contributing in the loading of cargo aboard the vessel. But the same rationale can apply to innumerable persons who perform work which is necessary or required to 'service' the ship for sea duty."

The Court of Appeals reversed the District Court and held that the fork lift machine being operated exclusively upon the dock to move cargo from a position of storage to a point on the dock from which it was subsequently loaded onto a vessel was in effect an appurtenance of the vessel to which the seaworthiness warranty extended. In support of said holding the Appellate Court cited its own decision of *Deffes vs. Federal Barge Lines, Inc.*, (5 Cir., 1966) 361 F. 2d 422, cert. denied, 385 U.S. 969. The Court of Appeals further held that Law was engaged in loading the vessel and entitled to the warranty of seaworthiness and relied on this Court's decisions of *Seas Shipping Co. vs. Sieracki*, 1946, 328 U.S. 85, 66 S. Ct. 872, 90 L. Ed. 1099; and *Gutierrez vs. Waterman Steamship Corp.*, 1963, 374 U.S. 858, 83 S. Ct. 1863, 10 L. Ed. 2d 1082.

VI.

REASONS FOR GRANTING THE WRIT

The decision of the United States Court of Appeals for the Fifth Circuit herein conflicts in principle with this Court's recent decision of *Nacirema Operating Company vs. Johnson*, 1969, 396 U.S. 212, 24 L.Ed.2d 371, 90 S. Ct. 347, extends the doctrine of the warranty of seaworthiness beyond the limits dictated by the decisions of this Court, and is in direct conflict with the decisions of other federal courts of appeal and district courts.

1. The undisputed facts of the instant case are that Respondent Bill Law was operating a fork lift machine exclusively on the dock moving cargo from its position

of dock storage to a point on the dock from which it was subsequently loaded onto the vessel. At no time did the Respondent, or the fork lift machine which he was operating, go aboard the vessel nor was cargo loaded directly from the lift machine to the vessel; none of the vessel's gear, equipment or appurtenances was in any way involved with the accident. The Court of Appeals concluded that under these facts the Respondent, although injured on the pier while operating shore-based equipment, was engaged in loading the vessel and entitled to the warranty of seaworthiness. The court below gave no consideration to the Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 USC § 740, or to the clear language of this Court regarding the applicability of this Act in *Nacirema Operating Company vs. Johnson*, 1969, 396 U.S. 212, 24 L.Ed.2d 371, 90 S. Ct. 347.

In *Nacirema*, a case admittedly concerned with the issue of whether a longshoreman injured on the pier was entitled to benefits under the Longshoremen's and Harbor Workers' Act, 44 Stat. 1424, 33 USC §§ 901-950, this Court discussed at some length the Extension of Admiralty Jurisdiction Act. Therein portions of the Act are quoted and commented upon by the Court as follows:

> "'The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.'

> By its very choice of language, the Act reenforces the conclusion that Congress was well aware of the distinction between land injuries and water injuries and that when it limited recovery to injuries on navigable waters, it did not mean injuries on land. The Act no doubt extended the admiralty tort jurisdiction to ship-caused injuries on a pier. But far from modifying the clean understanding in the law that a pier was an extension of land and that a pier injury was not on navigable waters but on land, the Act accepts that rule but nevertheless declares such injuries to be maritime torts if caused by a vessel on navigable waters." 24 L.Ed.2d at 379.

Further, this Court stated with regard to the Extension Act as follows:

> "There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. *But even construing the Extension Act to amend the Longshoremen's Act would not effect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act.*" 24 L.Ed.2d at 380. (Emphasis added.)

Circuit Judge Wright in his dissenting opinion in *Gebhard vs. S.S. HAWAIIAN LEGISLATOR*, (9 Cir., 1970) 425 F. 2d 1303, at 1313 commented on the foregoing language from *Nacirema* as follows:

"Justice White's observation could not have been casual or unintended. For the court below, whose judgment the Supreme Court reversed, had as an alternate ground of decision relied on the Extension Act to expand coverage under the Longshoremen's Act. Marine Stevedoring Corp. v. Oosting, 398 F. 2d 900, 906 (4th Cir. 1968). Judge Sobeloff suggested that the alternative to so construing the Longshoremen's Act was the toleration of a series of 'harsh and incongruous' differences in treatment of similarly-situated harbor workers. Id. at 907. The point of Justice White's remark, then, was that even were the Longshoremen's Act construed as incorporating the Extension Act, the incongruities feared by the Fourth Circuit would not be lessened. Uniform treatment of longshoremen's injuries could not be achieved, since *even under the Extension Act injuries on a pier resulting from pier-based equipment are not cognizable in admiralty* — even though they occur in connection with the loading or unloading of a ship. Justice White's construction of the Extension Act was thus central to his rejection of the reasoning below.

I should have thought the Supreme Court's construction of the Extension Act sufficient to dispose of plaintiff's unseaworthiness claim. For it is conceded that the injury here occurred 'on a pier.' And the only equipment alleged to be not reasonably fit for its intended use is 'pier-based' — namely, the straddle carriers."

This Court has unquestionably recognized that the Extension Act may permit an otherwise unavailable action in admiralty, *Gutierrez vs. Waterman S.S. Corp.*, 1963, 373 U.S. 206, 10 L.Ed. 2d 297, 83 S.Ct. 1185; however, it must be remembered that *Gutierrez* involved an injury caused by defective cargo containers which had been discharged onto the pier from a vessel on navigable waters. Here, Respondent's injury was caused "on a pier by pier-based equipment", and under the holding of *Nacirema*, is outside the Extension Act.

The Appellate Court has, by its opinion here for review, judicially extended the seaworthiness warranty beyond the intent and language of the Extension Act, and said opinion is in conflict with this Court's decision of *Nacirema Operating Company vs. Johnson.*

2. Relying on the decisions of this Court in *Seas Shipping Co. vs. Sieracki*, 1946, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099, and *Gutierrez vs. Waterman Steamship Corp.*, 1963, 374 U.S. 858, 84 S.Ct. 1863, 10 L.Ed.2d 1082, the court below has extended the doctrine of the warranty of seaworthiness beyond the limits which have been established by this Court in those cases.

In *Seas Shipping Co. vs. Sieracki*, supra, this Court held that the seaworthiness warranty extended to longshoremen injured on board a vessel while engaged in ship's work. Later, in *Pope & Talbot vs. Hawn*, 1953, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143, this Court extended the warranty to all shore-based workers engaged in the ship's service on board the vessel; in *Alaska S.S. Co. vs. Petterson*, 1954, 347 U.S. 396, 74

S.Ct. 601, 98 L.Ed. 798, the doctrine was held to include stevedore furnished equipment for use in the ship's service as well as the vessel's own equipment. In *Gutierrez vs. Waterman Steamship Corp.*, supra, this Court held that a longshoreman who was injured on the dock when he slipped on beans which came from torn and defective bags which had been discharged from the vessel would recover from the vessel for unseaworthiness of the defective cargo. In *Gutierrez* this Court held that "the duty to provide a seaworthy ship and gear, including cargo containers, applies to longshoremen unloading the ship whether they are standing aboard ship or on the pier." (373 U.S. at 215) However, the Court left unanswered the question of whether the duty extended to those individuals who were injured while working exclusively upon the pier moving cargo for subsequent loading onto the vessel and utilizing equipment completely disconnected from the vessel. The holding of *Gutierrez* is understandable in that the injury was caused by defective cargo which had been discharged from the vessel; here, the injury was caused by an allegedly defective shore-based fork lift machine[1] while the operator was moving cargo on the dock for subsequent loading onto the vessel. It is significant that the cargo had never been aboard the vessel; the lift machine did not go aboard the vessel; the Respondent never boarded the vessel; and the vessel's gear, equipment and appurtenances were not in any way responsible for the accident.

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[1]The District Court did not reach any decision on the question of any defect in the fork lift machine and stated a determination of this question was immaterial to the issue presented.

Clearly, the Appellate Court has extended the seaworthiness doctrine beyond the limitations established by the decisions of this Court. Under the rationale of the Court of Appeals' opinion, a vessel still at sea will owe its warranty of seaworthiness to those workers on the shore who move cargo to the dockside in anticipation of her arrival. By the same token, if cargo has been discharged from the vessel to the dock and the vessel departed from the port, a fork lift driver who may be injured by a defective lift machine, not by defective cargo, may hold the vessel responsible. Under the decision here sought to be reviewed, the vessel takes a secondary, passive role in the shore-based injury; the vessel's presence is apparently immaterial as the test now becomes, according to the Appellate Court, whether the injured worker was in some manner engaged in the handling of the cargo ultimately destined for loading onto a vessel. It is submitted this is neither the intent nor the rule of *Gutierrez*.

The Appellate Court has by its opinion extended the warranty of seaworthiness owed by a vessel far beyond the intent of *Gutierrez* which will have the effect of creating unlimited litigation against a vessel for occurrences over which the vessel has absolutely no control, unless this Court clarifies the limits to which the vessel's warranty extends.

3. The decision of the court below conflicts with the decisions of the Third and Ninth Circuit Courts of Appeals decisions of *Daniel vs. Skibs A/S Hilda Knudsen*, (3 Cir., 1966) 368 F.2d 178, affirming 253 F.Supp. 758 (E.D. Pa., 1966) and *Partenweederei, MS Belgrano*

vs. Weigel, (9 Cir., 1962) 299 F.2d 897, and with the district court decision of *Drumgold vs. Plovba and Hyter vs. D. B. Deniz Naklihati T.A.S.*, (E.D. Va., 1966) 260 F.Supp. 983 (two cases); the decision further conflicts with the lower court's own case of *Kent vs. Shell Oil Company*, (5 Cir., 1961) 286 F.2d 746.

In the *Daniel* case the court declined to extend the seaworthiness doctrine to a longshoreman who was injured in a warehouse when a pulley rope used to take cargo from a railroad flat car broke causing a block to strike and injure the plaintiff. The district court in *Daniel* said:

> "While Plaintiff's work may have contributed to the unloading process in a philosophical sense, it was not unloading in the sense that it was part of the ship's work. We are aware that the recent trend of decisions in this Circuit and the Supreme Court has been to widen the ambit of seaworthiness coverage. However, there has to be an end somewhere of the unloading process in the sense of liability imposing ship's work. 'Clearly the maritime jurisdiction extended to the act of reaching into the vessel and removing cargo. Such removal, having a beginning, had to have an end.' Spann vs. Lauritzen, 344 F.2d 204, 206 (C.A. 3, 1965)." 253 F. Supp. 758, at 762.

Further in the opinion the district court said (253 F. Supp. at 762):

> "As pointed out above, the basis for the development of the warranty was to protect

against maritime hazards those persons exposed to such hazards who are unable to protect themselves from the perils involved. The plaintiff here was completely shore-based. His work was ashore and he had no contact, remote or otherwise, with the ship. There is no more need for the development of a protective shield for those in plaintiff's then occupation than there is for those engaged in any other industrial occupation. Plaintiff was subject to no particular maritime hazard, nor indeed, to any hazard that the ordinary warehouse workers would not encounter."

In *Partenweederei, MS Belgrano vs. Weigel,* supra, a plaintiff was struck by a ship's crane while operating a tractor that was pulling a loaded railroad car to the edge of the dock to get it within reach of the ship's loading gear. The Ninth Circuit Court of Appeals held the Plaintiff was not "loading" the vessel and said:

"The evidence of this case relating to the nature of libellant's work is not in dispute. The libellant was driving a tractor on the dock. His job was to push or pull railroad cars loaded with lumber up to a point on the spur track where the lumber could be reached by the ship's loading gear. He did not participate in loading the lumber onto the vessel or in stowing it. He had nothing to do with ship's tackle nor did his work require him to perform any service aboard the ship. His work was performing solely on the dock and in an operation

preliminary to, but separate from, the work of loading the lumber onto the vessel." 299 F.2d 897, at 902.

The court below has quoted at length from the case of *Drumgold vs. Plovba*, supra, (opinion, pp. 9a-14a) wherein the Virginia district court declined to extend the warranty of seaworthiness to a longshoreman (Hyter) on the dock who was struck by a fork lift machine which was moving cargo from the dock to a storage area and to a longshoreman (Drumgold) who was injured when a truck, which was using its boom to move shifting boards near the vessel for subsequent loading onto the vessel, collapsed into the water. The court held the unloading process had terminated in *Hyter's* case and that the loading process had not commenced in *Drumgold*. Although the *Drumgold* decision is set forth almost verbatim in the lower court's opinion, which is appended as Appendix A hereto, Petitioners, believing the decision to be based on sound logic and representing the views of this Court, have reproduced and appended hereto the *Drumgold* decision in its entirety as Appendix G for the ready reference of this Honorable Court.

The court below held *Drumgold vs. Plovba*, supra, represented a "minority view" which defined loading "in an exceedingly narrow and mechanical fashion, limiting it to those activities which begin with the physical act of lifting the cargo onto the vessel. (Opinion, p. 8.) The district court in this case aligned itself with the *Daniels* and *Drumgold* cases; however, the Appellate Court chose to define "loading" and "unloading" as what it referred to "in a realistic sense rather

than as hypertechnical terms of art." (Opinion, p. 20.) In so holding, the Fifth Circuit relied on *Byrd vs. American Export Isbrandtsen Lines, Inc.*, (E.D. Pa., 1969) 300 F.Supp. 1207 which held that a longshoreman injured while moving cargo on the dock for subsequent loading onto the vessel was engaged in a "loading operation." The *Byrd* decision and the Appellate Court's decision herein, as well as cases cited by the court below,[2] are in direct conflict with the *Daniel, Weigel,* and *Drumgold* decisions discussed herein.[3]

In *Kent vs. Shell Oil Company*, (5 Cir., 1961) 286 F.2d 746, a truck driver who was injured while delivering a cargo of pipe to a barge was denied the seaworthiness warranty by the court below. The court held:

> "Where the injuries are sustained wholly ashore and are caused by a thing not a part of a vessel or its appurtenances, the failure or deficiency of such facility is not deemed either to constitute unseaworthiness or give rise to any recovery under the doctrine of unseaworthiness. Fredericks vs. American Export Lines, 2 Cir., 1955, 227 F.2d 450, 454, 1956 A.M.C. 57." 286 F.2d at 752.

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[2] *Gebhard vs. S.S. HAWAIIAN LEGISLATOR*, (9 Cir., 1970) 425 F.2d 1303; *Thompson vs. Calmar Steamship Corp.*, (3 Cir.; 1964) 331 F.2d 657, cert. denied, 379 U.S. 913; *Hagans vs. Ellerman & Bucknall Steamship Co.*, (3 Cir., 1963) 318 F.2d 563; *Olvera v. Michalos*, (S.D. Tex., 1968) 307 F.Supp. 9.

[3] cf. *Young vs. Chevron Oil Company*, (E.D. La., 1970) 314 F.Supp. 1248. *DiPaola vs. International Terminal Operating Co.*, (E.D. N.Y., 1968) 294 F.Supp. 736.

Clearly, the lower court's decision herein conflicts with its own holding in *Kent vs. Shell Oil Company*, supra, as well as with the decisions of other federal courts of appeal and district courts.

4. The decision of the court below involves an important question of Federal Maritime Law which affects the entire maritime industry with regard to injuries sustained by shore-based workers on the shore as the result of shore-based equipment. Any new interpretations of maritime law or further extensions of the seaworthiness doctrine should be fashioned by this Court, and the question here presented should be settled for the guidance of lower courts and the parties whose rights are affected thereby.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted and that the decree of the Court of Appeals should be reversed.

Respectfully submitted,

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28451

BILL LAW,
Plaintiff-Appellant,
versus

VICTORY CARRIERS, INC., etc.,
and the S. S. SAGAMORE HILL, etc.,
Defendants-Third Party
Plaintiffs-Appellees,
versus

GULF STEVEDORE CORP.,
Third-Party Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Alabama

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(September 16, 1970)

Before COLEMAN, GOLDBERG and MORGAN, Circuit Judges.

GOLDBERG, Circuit Judge: In this admiralty case

we must decide whether the post-*Gutierrez*[1] doctrine of unseaworthiness is sufficiently expansive to embrace a longshoreman moving cargo from a point on the dock toward the vessel as part of the total operation of loading the vessel. The longshoreman, plaintiff-appellant Bill Law, was injured on December 11, 1967, while working as part of a stevedore gang engaged in the loading of the SS SAGAMORE HILL. The SAGAMORE HILL, a vessel owned and operated by Victory Carriers, Inc. (Victory), was docked at the Port of Mobile, Alabama. Law's employer, Gulf Stevedore Corporation (Gulf), was in charge of the loading operation.

The record indicates that plaintiff Law had worked as a longshoreman for ten or twelve years prior to the accident. The exact situs and specific function of his work varied. On some days he drove a forklift machine on board a vessel; on some days he worked on the dock as a "hook up" man; and on some days he drove a forklift machine on the dock. On the day of his accident he was driving a forklift machine — one owned by his employer, Gulf — on the dock. He was using a forklift to carry cargo to the hook-up point on the dock alongside the vessel. The cargo consisted of bundles of metal-mesh aircraft landing mats. Law would pick up a bundle from a pile on the dock — the pile was located approximately 50 feet from the vessel — and take it to the hook-up point alongside the ship. The mats were not taken directly onto the vessel from the forklift machine. Instead, Law would set

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[1]**Gutierrez v. Waterman S. S. Corp., 1963, 374 U.S. 858, 83 S.Ct. 1863, 10 L.Ed.2d 1082.**

them down on the dock at the hook-up point, and they would subsequently be taken aboard the vessel by other longshoremen by use of the vessel's gear and equipment.

While Law was transporting one of the bundles of mats from the pile to the hook-up point, the overhead protection rack of the forklift machine came loose and fell on him, allegedly causing the injuries of which he now complains. The overhead protection rack, commonly called the "headache rack," is a metal frame positioned above the driver's seat to protect him from falling objects. Law's investigation after the accident allegedly revealed that the four bolts which should have secured the rack were missing.

Law filed a complaint in the district court alleging that his injuries were caused by the unseaworthiness of the SAGAMORE HILL and the negligence of Victory. The shipowner subsequently filed a third-party complaint against Gulf, seeking indemnity if Victory should be held liable to Law. After discovery both Victory and Gulf filed motions for summary judgment, to which Law responded by filing a cross-motion for summary judgment.

In ruling on the motions the district court considered only one issue — whether the warranty of seaworthiness extended to plaintiff Law.[2] The court concluded that Law was not "loading" the ship, that he therefore was not engaged in the service of the ship, and hence

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[2]The court did not pass on the question of whether or not the forklift machine was in fact defective.

that he was not within the scope of the warranty of seaworthiness. Having thus concluded that the doctrine of unseaworthiness was not applicable to this case, the court granted the motions of Victory and Gulf and denied the motion of Law.

Law now appeals, contending that the court below erred in holding that he was not within the scope of the warranty of seaworthiness. Agreeing with Law's contention, we reverse and remand.

The doctrine of unseaworthiness has been correctly called "a child of twentieth-century federal jurisprudence."[3] Brought to life by Mr. Justice Brown's famous dictum in *The Osceola*, 1903, 189 U.S. 158, 23 S.Ct. 483, 47 L.Ed. 760,[4] divorced from concepts of negligence in *Mahnich v. Southern Steamship Co.*, 1944, 321 U.S. 96, 94 S.Ct. 455, 88 L.Ed. 561, and nurtured in the bosom of a largely sympathetic judiciary ever since, the doctrine has experienced unremitting growth and expansion.[5] As Judge Coleman recently wrote for this

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[3]Note, *The Doctrine of Unseaworthiness in the Lower Federal Courts*, 76 Harv. L. Rev. 819 (1963).

[4]The second of Mr. Justice Brown's four propositions in his opinion for the Court was the following: "That the vessel and her owner are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship." 189 U.S. at 175.

[5]We find it unnecessary for purposes of this opinion to delineate a comprehensive historical overview of the development of the doctrine of unseaworthiness. We note, however, that this task has been undertaken with admirable results by some commentators and text writers. For example, excellent historical analyses can be found in Gilmore and Black, The Law of Admiralty, Chapter VI (1957) and Tetreault, *Seamen, Seaworthiness and the Rights of Harbor Workers*, 39 Cornell L.Q. 381 (1954).

court, "[t]he doctrine is a growing concept, constantly undergoing redefinition as the risks of those protected are enlarged by changing technology and ship board technique." *Dillon v. M. S. Oriental Inventor,* 5 Cir. 1970, 426 F.2d 977, 979.

Two Supreme Court decisions have particular relevance to the case at bar. The first is *Seas Shipping Co. v. Sieracki,* 1946, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099. In *Sieracki* the Supreme Court considered the question whether "the obligation of seaworthiness, traditionally owed by an owner of a ship to seamen," 378 U.S. at 87, "extends to longshoremen injured while doing the ship's work aboard [the ship] but employed by an independent stevedoring contractor whom the owner has hired to load or unload the ship," *id.* at 89. The Court answered this question in the affirmative, holding that a longshoreman injured on board a vessel could pursue his remedy for unseaworthiness against the shipowner as well as his remedy against his employer under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. § 901 et seq. The Court's rationale for extending the warranty of seaworthiness to longshoremen injured on board a vessel was that a worker "doing a seaman's work and incurring the seaman's hazards," *id.* at 99, should be entitled to the seaman's protections "regardless of the fact that he is employed immediately by another than the owner," *id.* at 99.

> "Historically the work of loading and unloading is the work of the ship's service, performed until recent times by members of the crew. [Citing cases]. That the owner seeks to have

> it done with the advantages of more modern divisions of labor does not minimize the worker's hazard and should not nullify his protection." *Id.* at 96.

Accordingly, the Court concluded that "when a man is performing the function essential to maritime service on board a ship the fortuitous circumstances of his employment by the shipowner or a stevedoring contractor should not determine the measure of his rights." *Id.* at 97.

The Court's subsequent decision in *Gutierrez v. Waterman Steamship Corp.*, 1963, 374 U.S. 858, 83 S.Ct. 1863, 10 L.Ed.2d 1082, further extended the applicability of the doctrine of unseaworthiness to longshoremen, for the Court in *Gutierrez* made it clear that the doctrine has relevance to injuries sustained of the vessel. The injured longshoreman in *Gutierrez* slipped on the dock on beans which had spilled out of defective bags during the unloading of a cargo of beans from the vessel. On these facts the Court concluded that the longshoreman was within the scope of the warranty of seaworthiness, holding that 'the duty to provide a seaworthy ship and gear, including cargo containers, *applies to longshoremen unloading the ship whether they are standing aboard ship or on the pier.*" 373 U.S. at 215 (emphasis added). The rationale implicit in this holding is a logical extension of *Sieracki*: since a longshoreman loading or unloading a vessel is doing a seaman's work and incurring a seaman's hazards, he should be entitled to the seaman's protections regardless of the fact that he is a few feet landward of the water line.

Although *Sieracki* and *Gutierrez* are the major constellations by which we steer our course in the present case, we must also be aware of several other developments in the law of admiralty which bear upon the ultimate disposition of this case. First, it is well established that the shipowner's warranty of seaworthiness extends to equipment supplied by the stevedore. *Alaska Steamship Co. v. Petterson*, 1954, 347 U.S. 396, 74 S.Ct. 601, 98 L.Ed. 798, affirming per curiam 9 Cir. 1953, 205 F.2d 478; *Rogers v. United States Lines*, 1954, 347 U.S. 984, 74 S.Ct. 849, 98 L.Ed. 1120, reversing per curiam 3 Cir. 1953, 205 F.2d 57; see *Italia Societa per Azioni di Navagazione v. Oregon Stevedoring Co.*, 1964, 376 U.S. 315, 84 S.Ct. 748, 11 L.Ed.2d 732. In the present case, therefore, the shipowner cannot be exonerated from liability by the mere fact that the forklift machine was owned by the stevedore rather than by the shipowner. Secondly — and this second principle ameliorates the apparent harshness of the principle just discussed — a shipowner held liable to a longshoreman for unseaworthiness may bring a third-party action against the stevedore for indemnity if the longshoreman's injury was occasioned by a breach of the stevedore's warranty (to the shipowner) of workmanlike performance. *Ryan Stevedoring Co. v. Pan-Atlantic Steamship Corp.*, 1956 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133. It is under this theory that Victory seeks indemnity from Gulf in the present case.[6] Finally, we

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[6]One significant result of the *Ryan* indemnity doctrine in cases involving land-based injuries was noted recently by the Ninth Circuit in Gebhard v. S.S. Hawaiian Legislator, 9 Cir. 1970, 425 F.2d 1303, 1312:

> "Although the landward extension of unseaworthiness has been criticized (*e.g.*, Skibinski v. Waterman S.S.

note that this circuit has specifically rejected the arguments (1) that the doctrine of unseaworthiness applies only to equipment which is part of the traditional gear of a ship and (2) that the doctrine applies only to equpment which is attached to or touching the ship. These arguments were laid to rest in Judge Thornberry's scholarly and well-reasoned opinion in *Deffes v. Federal Barge Lines, Inc.*; 5 Cir. 1966, 361 F.2d 422, *cert. denied*, 385 U.S. 969. Thus the application of the doctrine in the present case cannot be defeated (1) by the fact that the equipment here involved — a forklift machine — is a product of modern technology or (2) by the fact that the forklift was not physically attached to or touching the ship.

With these relevant concepts furnishing a backdrop, we turn to the fundamental question before us: Was Bill Law engaged in *loading* the SAGAMORE HILL when he sustained his injuries on December 11, 1967? Our answer to this question will determine whether he was within the scope of the warranty of seaworthiness.

In assaying this question, we find in the reported

Corp. (2d Cir. 1966) 360 F.2d 539, 543 (Judge Friendly dissenting), cert. denied (1967) 387 U.S. 921, 87 S.Ct. 2027, 18 L.Ed.2d 975), the overall result has not been unfortunate. Liability is generally shifted back to the stevedoring company through indemnity suits, and that company then has an incentive to improve its loading and unloading equipment. (*See* Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co. (1964) 376 U.S. 315, 324, 84 S.Ct. 748, 11 L.Ed.2d 732; Proudfoot, "'The Tar Baby': Maritime Personal Injury Indemnity Actions" (1968) 20 Stan.L.Rev. 423, 445-46.)"

cases two distinct approaches to the problem. One approach — the majority view — is to define "loading" in an exceedingly narrow and mechanical fashion, limiting it to those activities which begin with the physical act of lifting the cargo onto the vessel. Illustrative of this approach is *Drumgold v. Plovba*, E.D. Va. 1966, 260 F.Supp. 983. The opinion in *Drumgold* disposed of two separate actions, one by a longshoreman (Drumgold) who contended that he had been injured while *loading* a vessel, the other by a longshoreman (Hyter) who contended that he had been injured while *unloading* a vessel. The court rejected both contentions. To convey the full flavor of the court's opinion, we quote *in extenso* therefrom:

> "Drumgold, a longshoreman, was employed by Rogers Terminal and Shipping Corporation, a stevedore, when injured on October 21, 1965. At the time in question the stevedore was loading a cargo of grain aboard the defendant's vessel. BELA KRAJINA, at the docks of Cargill, Inc., in the City of Chesapeake pursuant to a contract between the stevedore and the shipowner. As a part of the stevedore's duty in loading the vessel and arranging for the stowage of grain, it was necessary to furnish, secure and place shifting boards in the ship's hold in order to prevent the grain from shifting while at sea. Plaintiff had been working aboard ship when he received orders from his employer (stevedore) to go ashore for the purpose of obtaining a specially rigged truck owned by the stevedore. He was instructed to load the truck with shifting boards and thereafter bring

the truck onto the pier alongside the vessel in order that the boards could be placed aboard the vessel and used in the holds. Plaintiff, following these instructions, obtained two bundles of shifting boards, loaded same on the truck by means of the special rigging, brought the truck alongside the ship on the pier, and unloaded the shifting boards onto the pier. It was intended that the vessel's crane would lift the boards from the pier to the deck of the ship. Plaintiff was thereafter directed to use the truck's boom and hoist for the purpose of moving the shifting boards closer to the side of the vessel, thereby positioning the boards under the ship's crane. There is evidence tending to establish that the stevedore knew, or should have known, of the defective condition of the truck, its boom and standing legs. Plaintiff, in attempting to put down the truck's stabilizing legs and lift the load, found the legs defective and the truck capsized, falling into the water, as a result of which plaintiff was injured. The ship's crane was later used to raise the truck out of the water. The truck was regularly used by the stevedore in connection with loading operations but, of course, was operated on the pier and never taken aboard a vessel. There is some evidence to the effect that the ship's mate declined to allow the use of the ship's crane and this fact necessitated the use of the truck, but this factor is not essential to this memorandum.

"Hyter is a longshoreman and, on September 8, 1965, was employed by Atlantic & Gulf Stevedores, Inc.; the latter having contracted with the shipowner to perform unloading operations involving a cargo of cork from defendant's vessel, SS YOZGAT, while docked at Pier B, Northside, Norfolk, Virginia. Plaintiff had the job of slinger on the dock and, while engaged as such, plaintiff was struck by an allegedly defective forklift which was owned, operated and controlled by Atlantic & Gulf Stevedores, Inc. It is generally conceded that the operation of forklift machines on the pier or dock is a necessary adjunct to completing the unloading process of any cargo taken from a ship. There were 21 men in the stevedoring gang; 13 being aboard the vessel and 8 on the dock. The bales of cork are lifted out of the hold and then lowered to the dock where the hooks are unfastened by the slingers, following which the bales are placed upon towmotors or forklifts and taken away. Hyter, the plaintiff, had unhooked the hooks on the bale of cork when a towmotor, operated by a fellow longshoreman, backed up and ran over Hyter. While the condition of the brakes on the forklift is disputed, we will assume for the purpose of argument that the brakes were defective.

"The respective plaintiffs contend that the warranty of seaworthiness must be extended to the truck in *Drumgold* and the towmotor in

Hyter. They rely upon Spann v. Lauritzen, 3 Cir., 344 F.2d 204, cert. den. 382 U.S. 938, 86 S.Ct. 386, 15 L.Ed.2d 348; Huff v. Matson Navigation Co., 9 Cir., 338 F.2d 205, cert. den. 380 U.S. 943, 85 S.Ct. 1026, 13 L.Ed.2d 963, [Deffes v. Federal Barge Lines, Inc., 5 Cir., 361 F.2d 422, cert. den. 385 U.S. 969, 87 S.Ct. 503, 504, 17 L.Ed.2d 433,] and Metzger v. SS Kirsten Torm, D.C. Md., 245 F.Supp. 227. They point also to the celebrated casts of Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 83 S.Ct. 1185, 10 L.Ed.2d 297, and Italia Societa etc. v. Oregon Stevedoring Co., 376 U.S. 315, 84 S.Ct. 748, 11 L.Ed.2d 732.

* * * *

". . . They urge, and not without merit, that if the longshoreman is in any manner engaged 'in the service of the ship', the warranty of seaworthiness applies if such service is anywise connected with the contemplated loading or the contemplated removal from the pier apron of cargo already on the pier for the purpose of stowage in a warehouse or for any other transfer purpose.

"Assuming without deciding the correctness of the rulings in *Huff*, *Spann*, and *Deffes*, this Court is not of the opinion that the seaworthiness doctrine can be so extended. For example, the longshoreman may be technically in the service of the ship if he is instructed to take a truck for the purpose of going into the city

to secure a rope or wire necessary in connection with the loading or unloading operations of a particular vessel. While so engaged the brakes on the truck become defective and, at a point many miles from the vessel, the longshoreman is injured by reason of an accident. Plaintiffs argue that the truck's defective brakes would render the vessel unseaworthy. In effect, what plaintiffs wish to do is to extend to the injured longshoreman all of the benefits accruing to the injured seaman under the Jones Act. See Hopson v. Texaco, Inc., 383 U. S. 262, 86 S.Ct. 765, 15 L.Ed.2d 740.

"In *Gutierrez* the injury to the longshoreman was sustained when he slipped on loose beans spilled on the dock occasioned by the unseaworthy condition of the cargo while aboard the vessel, with a resultant spillage during unloading operations. We agree that *Gutierrez* clearly extends the seaworthiness doctrine to longshoreman 'loading or unloading' a ship, whether aboard the ship or on the pier. We do not, however, find that the loading operation in *Drumgold* had commenced — and we further find that the unloading operation in Hyter had terminated — when the respective longshoremen were injured. Manifestly the items of equipment giving rise to the injuries were never intended to be used aboard ship; they were, at best, mere conveyors to bring equipment needed to the ship's side (*Drumgold*), or to remove already unloaded cargo to another area (*Hyter*). We find no authority which would

cause us to hold that every piece of equipment and every activity leading up to or following the loading or unloading operation must be covered under the warranty of seaworthiness. We are concerned with the ship and the ship's equipment attendant to the *ship's duty to load and unload.* If such assumption is incorrect we will be constantly confronted with claims alleging unseaworthiness of a vessel because of cargo, about to be loaded aboard ship, which falls in a warehouse on the pier thereby injuring an employee of the stevedoring concern. In *Drumgold* we do not believe that the loading operation, insofar as the warranty of seaworthiness is concerned, commenced until the shifting boards were in the process of being physically moved from the stevedore's truck to the deck. In *Hyter* we feel that the unloading terminated, insofar as the warranty of seaworthiness is concerned, when the bale of cork in a seaworthy condition was properly detached by the slingers and was at rest on the pier awaiting removal to another area. It was at these points that the warranty of seaworthiness started and stopped. Such a holding does no violence to *Gutierrez, Huff, Spann, Deffes,* and *Metzger,* all relied upon by the plaintiffs. It merely places a reasonable limitation upon the extent of seaworthiness warranty." 260 F. Supp. at 984-85, 986-87, (footnotes omitted).

In the case *sub judice* the district court embraced the narrow definition of "loading." The final order entered by the court below included the following language:

> "[T]he question presented to the Court for decision is whether a longshoreman removing cargo from storage to dockside by operating a forklift machine is performing ship's work and therefore entitled to a seaworthy vessel. After careful consideration of the facts and the applicable law, the Court concludes that the plaintiff, Bill Law, was not engaged in work for the service of the ship and not covered by the warranty of seaworthiness.
>
> "The Court's conclusion is based on the 'status' of plaintiff's work and not his situs at the time of the injury. Plaintiff was positioning cargo on the dock which in turn would be loaded onto the vessel. The cargo was not directly loaded from the plaintiff's forklift nor did the plaintiff assist in the loading of the cargo into the hold of the vessel. In the simplest sense, all plaintiff was doing was bringing cargo to the dock to be loaded on the vessel. Would a truck driver who drives to the dock in his truck and unloads freight which in turn will become cargo for a vessel be entitled to a seaworthy vessel? Would his truck be an appurtenance to the ship? The Court thinks not. True, the plaintiff's association with the vessel and to the loading operation of the cargo is closer than the hypothetical presented above, but to extend the seaworthiness doctrine to

the plaintiff's work would also extend the doctrine to an unlimited number of situations for which it was never intended. The plaintiff was not engaged in the *actual* loading of the vessel at the time of the accident. It is easy to say that he was assisting or contributing in the loading of the cargo aboard the vessel. But the same rationale can apply to innumerable persons who perform work which is necessary or required to 'service' the ship for sea duty. The liability of the ship is not unlimited. A line must be drawn. As stated in *Daniel v. Skibs A/S Hilda Knudsen,* 253 F.Supp. 758, affirmed 368 F.2d 178 (3rd C.A. 1966):

> 'While plaintiff's work may have contributed to the unloading process in a philosophical sense, it was not unloading in the sense that it was a part of the ship's work. We are aware that the recent trend of decisions in this Circuit and in the Supreme Court has been to widen the ambit of seaworthiness coverage. However, there has to be an end somewhere of the unloading process in the sense of liability imposing ship's work.'

"The above statement certainly applies to the loading process as well as the unloading of the ship; just as there must be an end to the unloading, there must be a beginning for the loading operation. In the immediate case, the plaintiff was not loading cargo aboard the

> vessel in the sense of 'ship's work' and his theory of recovery against the defendant for unseaworthiness must fail."

It is thus apparent that the district court concluded that Law was not "loading" the SAGAMORE HILL because his job — moving the aircraft landing mats to the hook-up point adjacent to the vessel — entailed activities which preceded the actual physical act of lifting the cargo onto the vessel.

The more prevalent view, however, is found in cases which define the terms "loading" and "unloading" in a more pragmatic and less ritualistic sense. Illustrative of these cases is *Byrd v. American Export Isbrandtsen Lines, Inc.*, E.D. Pa. 1969, 300 F.Supp. 1207. Like the case now before us, *Byrd* involved an injury to a longshoreman engaged in moving cargo by means of a forklift machine from one point on the dock to another point nearer the vessel. The court held that the longshoreman was involved in the operation of loading the vessel at the time of his injury. We quote the court's opinion:

> "This is a motion for summary judgment filed by the defendant shipowner in this action by a longshoreman. Defendant contends that the plaintiff's deposition conclusively establishes that the plaintiff's accident could have been occasioned only by either of two possible causes and that defendant was not responsible for either cause.
>
> "Plaintiff's deposition discloses that he and Otis Givens, another longshoreman, were en-

gaged in an attempt to move from the back to the front of the pier, a forklift truck, which was intended to be loaded aboard defendant's vessel as cargo. The attempt was undertaken by backing up another forklift truck, identified as No. 947, to the prospective cargo, so that the latter could be towed forward. As plaintiff bent down between the two trucks to attach a tow rope, No. 947 backed up, catching plaintiff between the two. Plaintiff does not know where Otis Givens was at the time plaintiff was injured, but says he last observed Givens getting off No. 947 before the accident. No ship's gear was attached to No. 947, which was owned by Atlantic & Gulf Stevedores, Inc.

"Defendant asserts that even if No. 947 was backed into plaintiff by Givens or rolled into the plaintiff because of some defective condition, the defendant cannot be held liable, because the activity in which the plaintiff was then engaged on the pier was *not yet* the loading operation of the ship.

"Defendant concedes, as it must, that it is immaterial whether the accident occurred on the pier away from the ship, *if the longshoreman was actually engaged in the service of the ship*, which includes the loading operation. Gutierrez v. Waterman Steamship Corporation, 373 U.S. 206, 83 S.Ct. 1185, 10 L.Ed.2d 297 (1963); Hagans v. Ellerman & Bucknall Steamship Co., 318 F.2d 563 (3 Cir. 1963).

"We believe that defendant unduly delimits the term 'loading' to the actual transfer of the cargo from the front of the pier to the vessel. The backing of No. 947 to the intended cargo and the endeavor to attach the tow rope between the vehicles were concomitant and essential steps in the loading operation.

"As this Court has stated in a similar situation in which the defendant claimed that plaintiff was merely *preparing* the cargo for loading, when he was injured while placing 'chocks' under a draft of steel beams prior to their being hoisted aboard the vessel:

> 'The term loading is not a word or art, and is not to be narrowly and hypertechnically interpreted. Plaintiffs' actions at the time of the accident were direct, necessary steps in the physical transfer of the steel from the railroad car into the vessel which constituted the work of loading.' Litwinowicz v. Weyerhaeuser Steamship Co., 179 F. Supp. 812, 817-818 (E.D. Pa. 1959).

"Since we conclude that plaintiff was essentially engaged in a loading operation and was using equipment necessary for that purpose, which was at least temporarily adopted by the ship, the defendant's motion must be denied." 300 F.Supp. at 1208 (footnote omitted).

For other holdings in a similar vein, see, e.g., *Gebhard v. S. S. Hawaiian Legislator*, 9 Cir. 1970, 425 F.2d 1303; *Thompson v. Calmar Steamship Corp.*, 3 Cir. 1964, 331 F.2d 657, *cert. denied*, 379 U.S. 913; *Hagans v. Ellerman & Bucknall Steamship Co.*, 3 Cir. 1963, 318 F.2d 563; cf. *Olvera v. Michalos*, S.D. Tex. 1968, 307 F.Supp. 9.

We choose to align ourselves with the cases which define "loading" and "unloading" in a realistic sense rather than as hypertechnical terms of art. It seems to us that plaintiff Law was clearly engaged in "loading" the SAGAMORE HILL under any conventional interpretation of that term. He was part of a group of longshoremen who were engaged in the total operation of moving cargo from the dock to the vessel. Some of the longshoremen involved in the operation were on board the vessel, while others were on the dock. The efforts of both the ship-side workers and the shore-side workers were necessary to load the ship. We think it would be incongruous and capricious to deny the protection of the warranty of seaworthiness to plaintiff Law while granting it to his fellow longshoremen whose duties happened to involve activities on the vessel or the actual physical act of lifting the cargo onto the ship. To deny him the benefits of the doctrine of unseaworthiness under these circumstances would be to reject the humanitarian policy which underlies the doctrine. Law was subjected to the risks and hazards of loading the ship;[7] he should likewise receive the protections afforded those who load ships.

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[7]For an enlightening discussion of the risks incurred by longshoremen, see Note, *Risk Distribution and Seaworthiness*, 75 Yale L.J. 1174 (1966).

In so holding, of course, we decide only the case before us and do not attempt to anticipate the cases which may arise in the future. For example, we do not take the position — asserted unsuccessfully by the plaintiffs in *Drumgold v. Plovba, supra* — that a longshoreman who is instructed to drive a truck many miles inland on a mission for his employer is necessarily within the scope of the warranty of seaworthiness. If such a case is to arise in the future, it should be decided then, not now.

We do not have here an accident occurring in some urban enclave or pastoral pasture far removed from the pier. On the contrary, Law's activities had proximity to and continuity with the job at hand — the task of loading cargo aboard the SAGAMORE HILL. His specific job performance was so integrally woven into the entire loading operation that the two cannot be separated except by the erection of hypertechnical and unrealistic legal barriers. If the terms "loading" and "unloading" are to be terms associated with reality rather than mere conceptual microcosms without adjuncts beyond the ship's beam, we have no choice but to conclude that plaintiff Law was engaged in loading the SAGAMORE HILL. We therefore hold that on the facts of this case — a longshoreman, intimately involved in the process of loading a vessel, injured as he moved cargo from the back to the front of the dock — plaintiff was within the scope of the warranty of seaworthiness.

Since we have concluded that the doctrine of unseaworthiness is here applicable, plaintiff must be afforded the opportunity to prove the truth of his allega-

tions. We therefore remand the case to the district court for further proceedings consistent with this opinion.

REVERSED and REMANDED.

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BILL LAW,

Plaintiff,

versus

VICTORY CARRIERS, INC., etc., and the SS SAGAMORE HILL, etc.,

Defendants and Third-Party Plaintiffs,

CIVIL ACTION
NO. 4941-68-T

versus

GULF STEVEDORE CORP., a corporation,

Third-Party Defendant.

This matter comes before the Court on the motions and cross-motion for summary judgment filed by all parties. The defendant, Victory Carriers, Inc. and third-

party defendant, Gulf Stevedore Corporation, filed motions for summary judgment on May 8, 1969, and May 6, 1969, respectively, alleging that there is no genuine dispute as to material fact and that judgment as a matter of law should be entered in their favor.

On May 14, 1969, the plaintiff herein, filed a cross-motion summary judgment, joining the defendant and third-party defendant in alleging that there is no genuine dispute as to the facts, but that judgment should be entered for the plaintiff.

All motions were taken under submission by the Court on June 6, 1969, with leave granted to the parties to furnish the Court with written briefs.

Now after consideration thereof, the Court enters the following findings.

The material facts in this case, with the exception of the defectiveness of the forklift machine which plays no part in the Court's determination for summary judgment, are not in serious dispute. The pertinent facts are as follows.

On or about December 11, 1967, the plaintiff herein, Bill Law, was a longshoreman forklift operator working on the docks in Mobile, Alabama. On this particular date, the plaintiff was picking up landing mats with the forklift machine at a storage point approximately 50 feet away from the vessel, the SS SAGAMORE HILL. The plaintiff would pick up one landing mat and move it towards the vessel at the hook-up position on the dock. The cargo was not hooked up from the machine,

but only placed down on the dock. At a point somewhere midway between the storage pile and the hook-up position, the overhead rack on the forklift machine became loose and struck and injured the plaintiff. The plaintiff sued the defendant as the owner of the vessel alleging that the vessel and its appurtenances and gear were unseaworthy. The defendant filed a third-party complaint seeking indemnification on the part of the plaintiff's employer, if the defendant is liable to the plaintiff. In the motions for summary judgment the third-party defendant and defendant assert that the plaintiff was not engaged in the service of the ship at the time of the accident and that the warranty of seaworthiness does not extend to him. The plaintiff asserts the opposite position in support of his motion for summary judgment.

Therefore, the question presented to the Court for decision is whether a longshoreman removing cargo from storage to dockside by operating a forklift machine is performing ship's work and therefore entitled to a seaworthy vessel. After careful consideration of the facts and the applicable law, the Court concludes that the plaintiff, Bill Law, was not engaged in work for the service of the ship and is not covered by the warranty of seaworthiness.

The Court's conclusion is based on the "status" of plaintiff's work and not his situs at the time of the injury. Plaintiff was positioning cargo on the dock which in turn would be loaded onto the vessel. The cargo was not directly loaded from the plaintiff's forklift nor did the plaintiff assist in the loading of the cargo into the hold of the vessel. In the simplest

sense, all plaintiff was doing was bringing cargo to the dock to be loaded on the vessel. Would a truck driver who drives to the dock in his truck and unloads freight which in turn will become cargo for a vessel be entitled to a seaworthy vessel? Would his truck be an appurtenance to the ship? The Court thinks not. True, the plaintiff's association with the vessel and to the loading operation of the cargo is closer than the hypothetical presented above, but to extend the seaworthiness doctrine to the plaintiff's work would also extend the doctrine to an unlimited number of situations for which it was never intended. The plaintiff was not engaged in the *actual* loading of the vessel at the time of the accident. It is easy to say that he was assisting or contributing in the loading of the cargo aboard the vessel. But the same rationale can apply to innumerable persons who perform work which is necessary or required to "service" the ship for sea duty. The liability of the ship is not unlimited. A line must be drawn. As stated in *Daniel v. Skibs A/S Hilda Knudsen*, 253 F. Supp 758, affirmed 368 F.2d 178 (3rd C.A. 1966):

> "While plaintiff's work may have contributed to the unloading process in a philosophical sense, it was not unloading in the sense that it was a part of the ship's work. We are aware that the recent trend of decisions in this Circuit and in the Supreme Court has been to widen the ambit of seaworthiness coverage. However, there has to be an end somewhere of the unloading process in the sense of liability imposing ship's work."

The above statement certainly applies to the loading process as well as the unloading of the ship; just as there must be an end to the unloading, there must be a beginning for the loading operation. In the immediate case, the plaintiff was not loading cargo aboard the vessel in the sense of "ship's work" and his theory of recovery against the defendant for unseaworthiness must fail. The Court so finds.

Therefore, for good cause appearing

It is ORDERED, ADJUDGED and DECREED by the Court that the motion for summary judgment filed by the third-party defendant on May 6, 1969, should be and is hereby GRANTED.

It is further ORDERED, ADJUDGED and DECREED by the Court that the motion for summary judgment filed on May 8, 1969, by the defendant should be and is hereby GRANTED.

It is further ORDERED, ADJUDGED and DECREED by the Court that the cross-motion for summary judgment filed by plaintiff on May 14, 1969, should be and is hereby DENIED.

DONE at Mobile, Alabama, this the 15th day of July 1969.

DANIEL H. THOMAS
UNITED STATES DISTRICT JUDGE

U. S. DISTRICT COURT
SOU. DIST. ALA.

FILED AND ENTERED THIS THE
15th DAY OF JULY,
1969, MINUTE ENTRY
NO. 25761

WILLIAM J. O.CONNOR, CLERK
BY WILLIAM J. O'CONNOR
DEPUTY CLERK

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1969

No. 28451

D. C. Docket No. CA 4941-68-T

BILL LAW,
Plaintiff-Appellant,

versus

VICTORY CARRIERS, INC., etc.,
and the S. S. SAGAMORE HILL, etc.,
Defendants-Third-Party
Plaintiffs-Appellees,

versus

GULF STEVEDORE CORP.,
Third-Party Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Alabama

Before COLEMAN, GOLDBERG and MORGAN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court for further proceedings consistent with the opinion of this Court.

It is further ordered that defendants-third party plaintiffs-appellees and third-party defendant-appellee, pay to plaintiff-appellant, the costs on appeal to be taxed by the Clerk of this Court.

September 16, 1970

Issued As Mandate:

APPENDIX D

PERMANENT RECORDS

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28451

BILL LAW,
Plaintiff-Appellant,
versus

VICTORY CARRIERS, INC., etc.,
and the S. S. SAGAMORE HILL, etc.,
Defendants-Third Party
Plaintiff-Appellees,
versus

GULF STEVEDORE CORP.,
Third-Party Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Alabama

---

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

(Opinion Sept. 16, 1970, 5 Cir., 1970, ____ F.2d ____).

(November 3, 1970)

Before COLEMAN, GOLDBERG and MORGAN, Circuit Judges.

PER CURIAM: The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 33 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED

APPENDIX E

UNITED STATES COURT OF APPEALS
Fifth Circuit
Office of the Clerk

November 17, 1970

Edward W. Wadsworth
Clerk

Room 408-400 Royal St.
New Orleans, La. 70130

Mr. W. Boyd Reeves
Attorney at Law
P. O. Box 290
Mobile, Alabama 36601

RE: NO. 28451 - Bill of Law vs. Victory Carriers, Inc. etc. vs. Gulf Stevedore Corp.

Mandate Stayed to 12/17/70.

Dear Sir:

The Court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this Court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore, will not be routinely prepared by this office. 38 LW 3502.

Enclosed is a copy of the opinion, judgment and order denying rehearing which are still required by the Supreme Court to be incorporated as an appendix to your petition.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

(Signed) G. F. GANCHEAU
G. F. Ganucheau
Chief Deputy Clerk

/ra
enc.
cc: Mr. Francis M. Thigpen
Mr. Ross Diamond, Jr.
Mr. George F. Wood

APPENDIX F

ADMIRALTY AND MARITIME JURISDICTION EXTENSION ACT

46 U.S.C. Section 740.

"The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: *Provided,* That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: *Provided further,* That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. June 19, 1948, c. 526, 62 Stat. 496."

APPENDIX G

Richard L. DRUMGOLD, Plaintiff,

v.

Spelsna PLOVBA, Defendant.
Sam HYTER, Plaintiff,

v.

D. B. DENIZ NAKLIHATI T. A. S.,
Defendant.
Civ. A. Nos. 5298, 5307.

United States District Court
E. D. Virginia,
Norfolk Division.
Nov. 29, 1966.

---

* * * *

MEMORANDUM

WALTER E. HOFFMAN, Chief Judge.

In all pertinent respects the factual situation and legal issues raised in these cases are substantially identical.

Drumgold, a longshoreman, was employed by Rogers Terminal and Shipping Corporation, a stevedore, when

injured on October 21, 1965. At the time in question the stevedore was loading a cargo of grain aboard the defendant's vessel, BELA KRAJINA, at the docks of Cargill, Inc., in the City of Chesapeake pursuant to a contract between the stevedore and the shipowner. As a part of the stevedore's duty in loading the vessel and arranging for the stowage of grain, it was necessary to furnish, secure and place shifting boards in the ship's hold in order to prevent the grain from shifting while at sea. Plaintiff had been working aboard ship when he received orders from his employer (stevedore) to go ashore for the purpose of obtaining a specially rigged truck owned by the stevedore. He was instructed to load the truck with shifting boards and thereafter bring the truck onto the pier alongside the vessel in order that the boards could be placed aboard the vessel and used in the holds. Plaintiff, following these instructions, obtained two bundles of shifting boards, loaded same on the truck by means of the special rigging, brought the truck alongside the ship on the pier, and unloaded the shifting boards onto the pier. It was intended that the vessel's crane would lift the boards from the pier to the deck of the ship. Plaintiff was thereafter directed to use the truck's boom and hoist for the purpose of moving the shifting Boards closer to the side of the vessel, thereby positioning the boards under the ship's crane. There is evidence tending to establish that the stevedore knew, or should have known, of the defective condition of the truck, its boom and standing legs. Plaintiff, in attempting to put down the truck's stabilizing legs and lift the load, found the legs defective and the truck capsized, falling into the water, as a result of which plaintiff was injured. The ship's crane was later used to raise the

truck out of the water. The truck was regularly used by the stevedore in connection with the loading operations but, of course, was operated on the pier and never taken aboard the vessel. There is some evidence to the effect that the ship's mate declined to allow the use of the ship's crane and this fact necessitated the use of the truck, but this factor is not essential to this memorandum.

Hyter is a longshoreman and, on September 8, 1965, was employed by Atlantic & Gulf Stevedores, Inc.; the latter having contracted with the shipowner to perform unloading operations involving a cargo of cork from defendant's vessel, SS YOZGAT, while docked at Pier B, Northside, Norfolk, Virginia. Plaintiff had the job of slinger on the dock and, while engaged as such, plaintiff was struck by an allegedly defective forklift which was owned, operated and controlled by Atlantic & Gulf Stevedores, Inc. It is generally conceded that the operation of forklift machines on the pier or dock is a necessary adjunct to completing the unloading process of any cargo taken from a ship. There were 21 men in the stevedoring gang; 13 being aboard the vessel and 8 on the dock. The bales of cork are lifted out of the hold and then lowered to the dock where the hooks are unfastened by the slingers, following which the bales are placed upon towmotors or forklifts and taken away. Hyter, the plaintiff, had unhooked the hooks on a bale of cork when a towmotor, operated by a fellow longshoreman, backed up and ran over Hyter. While the condition of the brakes on the forklift is disputed, we will assume for the purpose of argument that the brakes were defective.

The respective plaintiffs contend that the warranty of seaworthiness must be extended to the truck in *Drumgold* and the towmotor in *Hyter*. They rely upon Spann v. Lauritzen, 3 Cir., 344 F.2d 204, cert. den. 382 U.S. 938, 86 S.Ct. 386, 15 L.Ed.2d 348; Huff v. Matson Navigation Co., 9 Cir., 338 F.2d 205, cert. den. 380 U.S. 943, 85 S.Ct. 1026, 13 L.Ed.2d 963, and Metzger v. SS Kirsten Torm, D.C. Md., 245 F.Supp. 227. They point also to the celebrated cases of Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 83 S.Ct. 1185, 10 L.Ed.2d 297, and Italia Societa etc. v. Oregon Stevedoring Co., 376 U.S. 315, 84 C.St. 748, 1 L.Ed.2d 732. Especially, plaintiffs say, is the significance of footnote 3 from *Italia* where it says in part:

> "If the owner engages others who supply the equipment necessary for stevedoring operations, he must still answer to the longshoreman if the gear proves to be unseaworthy."

Taking the foregoing statement at its face value, without more, it encompasses every phase of a stevedoring operation from office management to actual loading or unloading, irrespective of the type of equipment used and without regard to the manner and place of injury. Stated otherwise, if equipment is directly or indirectly used as a necessary adjunct to a stevedoring operation as a business enterprise, then, plaintiffs argue, the warranty of seaworthiness applies.

In *Huff*, the longshoreman was injured in the hold of the ship because of a defect in a conveyor system which was attached to a gantry crane running on rails along the pier. Thus the conveyor system, while at-

tached to a shoreside piece of equipment, was actually brought aboard or into the vessel and constitutes a reasonable extension of the rule pronounced in Alaska S.S. Co. v. Petterson, 347 U.S. 396, 74 S.Ct. 601, 98 L.Ed. 798.

In *Spann*, the longshoreman was engaged in unloading a hopper which stood on a pier but was not attached to the vessel. A shore-based crane would lower a bucket into the hold, pick up a load of nitrate, swing it around, and drop it into a hopper on the pier. Empty trucks would move under the hopper and the plaintiff-longshoreman would then open the door of the hopper to permit the nitrate to dump into the waiting truck. The longshoreman was injured because of a defective release mechanism on the hopper, thereby causing a sudden premature downward movement of the hopper handle.

The doctrine of seaworthiness has been applied to a longshoreman injured on the dock due to the defective operation of a ship's winch in unloading operations in American Export Lines, Inc. v. Revel, 4 Cir., 266 F.2d 82, decided in 1959, prior to the decisions from Third and Ninth Circuits in *Spann* and *Huff* respectively, and several years before Gutierrez and Italia Societa.

There is a definite conflict in Circuits occasioned by other opinions from the Second and Sixth Circuits. In Forkin v. Furness Withy & Co., 2 Cir., 323 F.2d 638, Circuit Judge Friendly suggests cogent reasons why there is no warranty of seaworthiness owed to a longshoreman injured while engaged in attempting to make fast a conveyor being raised to a ship. And in McKnight

v. N. M. Paterson & Sons, Ltd., N.D.Ohio, 181 F.Supp. 434, affirmed 6 Cir., 286 F.2d 250, cert. den. 368 U.S. 913, 83 S.Ct. 189, 7 L.Ed.2d 130, a recovery was denied on summary judgment where the longshoreman, while working in the hold of the vessel, was struck by a part of the unloading gear being lowered into the ship's hold by means of a shore-based crane owned and operated by the stevedore. The *Forkin* opinion considers and distinguishes *Gutierrez*, the 1963 decision of the United States Supreme Court.

In 1955 the case of Fredericks v. American Export Lines, 2 Cir., 227 F.2d 450, cert. den. 350 U.S. 989, 76 S.Ct. 475, 100 L.Ed. 855 was decided and is, factually speaking, closest in point to the situation here presented. There the longshoreman was injured when a skid, located on a pier and used in the unloading of cargo, failed. The argument was advanced that the cargo could not be safely transferred from aboard ship to the upper story of the pier without the use of a skid. As Circuit Judge Medina said on this subject:

> "But tools or equipment do not become part of a lessee's plant merely because such tools or equipment are indispensable to the work that an independent contractor has agreed to perform. * * *
>
> "* * * (H)ere the injury was incurred by a longshoreman standing on a pier, as a result of the failure of a defective appliance located on the pier and furnished by a subcontractor. No decision so far has extended the sweeping protec-

> tion of the seaworthiness doctrine to this situation. No vessel was connected with the accident."

On the subject as to whether any "vessel was connected with the accident", it should be noted that the longshoreman was engaged in assisting in the transfer of cargo from a ship to the upper story of the pier.

More recently, Deffes v. Federal Barge Lines, Inc., 5 Cir., 361 F.2d 422, cert. pending, has been added to the list approving *Huff* and *Spann*, and rejecting *McKnight* and *Forkin*.

The plaintiffs in these cases are urging a further expansion of the *Huff*, *Spann*, and *Deffes* doctrine. They urge, and not without merit, that if the longshoreman is in any manner engaged "in the service of the ship", the warranty of seaworthiness applies if such service is anywise connected with the contemplated loading or the contemplated removal from the pier apron of cargo already on the pier for the purpose of stowage in a warehouse or for any other transfer purpose.

Assuming without deciding the correctness of the rulings in *Huff*, *Spann*, and *Deffes*, this Court is not of the opinion that the seaworthiness doctrine can be so extended. For example, the longshoreman may be technically in the service of the ship if he is instructed to take a truck for the purpose of going into the city to secure a rope or wire necessary in connection with the loading or unloading operations of a particular vessel. While so engaged the brakes on the truck become defective and, at a point many miles from the vessel, the longshoreman is injured by reason of an

accident. Plaintiffs argue that the truck's defective brakes would render the vessel unseaworthy. In effect, what plaintiffs wish to do is to extend to the injured longshoreman all of the benefits accruing to the injured seaman under the Jones Act. See: Hopson v. Texaco, Inc., 383 U.S. 262, 86 S.Ct. 765, 15 L.Ed.2d 740.[1]

[1-3] In *Gutierrez* the injury to the longshoreman was sustained when he slipped on loose beans spilled on the dock occasioned by an unseaworthy condition of the cargo while aboard the vessel, with a resultant spillage during unloading operations. We agree that *Gutierrez* clearly extends the seaworthiness doctrine to longshoremen "loading or unloading" a ship, whether aboard the ship or on the pier. We do not, however, find that the loading operation in *Drumgold* had commenced — and we further find that the unloading operation in Hyter had terminated — when the respective longshoremen were injured. Manifestly, the items of equipment giving rise to the injuries were never intended to be used aboard ship; they were, at best, mere conveyors to bring equipment needed to the ship's side (*Drumgold*), or to remove already unloaded cargo to another area (*Hyter*). We find no authority which would cause us to hold that every piece of equipment and every activity leading up to or following the loading or unloading operation must be covered under the warranty of seaworthiness. We are concerned with the ship and the ship's equipment attendant to the *ship's duty to load and unload.* If such assumption is incor-

---

[1] But Hopson v. Texaco, Inc., supra, does not purport to say anything with respect to the warranty of seaworthiness. The injured and deceased seamen were undoubtedly "in the service of the vessel" when involved in the taxi accident.

rect we will be constantly confronted with claims alleging unseaworthiness of a vessel because of cargo, about to be loaded aboard ship, which falls in a warehouse on the pier thereby injuring an employee of the stevedoring concern. In *Drumgold* we do not believe that the loading operation, insofar as the warranty of seaworthiness is concerned, commenced until the shifting boards were in the process of being physically moved from the stevedore's truck to the deck. In *Hyter*[2] we feel that the unloading terminated, insofar as the warranty of seaworthiness is concerned, when the bale of cork in a seaworthy condition was properly detached by the slingers and was at rest on the pier awaiting removal to another area. It was at these points that the warranty of seaworthiness started and stopped. Such a holding does no violence to *Gutierrez, Huff, Spann, Deffes* and *Metzger,* all relied upon by the plaintiffs. It merely places a reasonable limitation upon the extent of the seaworthiness warranty.

Whatever has been said herein does not constitute any expression of opinion as to negligence, if the plaintiffs determine that any such basis of recovery exists.

[2]*Hyter* was argued together with *Drumgold.* Counsel in *Hyter* were instructed to prepare a stipulation of facts which apparently has not been done. If the facts in *Hyter* are incorrectly stated, the Court should be so advised.

PROOF OF SERVICE

I, T. K. JACKSON, JR., one of the attorneys for the Petitioners herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of November, 1970, I served three copies of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on Bill Law, Respondent herein, by mailing the same in a duly addressed envelope, with first class postage prepaid, to Honorable Ross Diamond, Jr., attorney for Respondent, at his office address, 610 Van Antwerp Building, Mobile Alabama.

T. K. JACKSON, JR.
Counsel for Petitioner
1101 Merchants National
Bank Building
Mobile, Alabama 36602

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JAN 25 1971

Supreme Court of the United States

OCTOBER TERM, 1970

70-54

No. 1092

VICTORY CARRIERS, INC., S. S. SAGAMORE HILL AND GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

Respondent's Brief in Opposition To Petition for Writ of Certiorari

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1970

No. 1092

VICTORY CARRIERS, INC., S. S. SAGAMORE HILL, and GULF STEVEDORE CORP.,
Petitioners,

versus

BILL LAW,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

If It Please This Honorable Court:

ARGUMENT AGAINST GRANTING CERTIORARI

I

THE CIRCUIT COURTS ARE IN ACCORD IN HOLDING THAT THE WARRANTY OF SEAWORTHINESS APPLIES TO A SHORE-BASED LONGSHOREMAN DIRECTLY AND INTIMATELY INVOLVED IN THE PROCESS OF LOADING OR UNLOADING A VESSEL AND USING EQUIPMENT WHICH IS A NECESSARY AND INTEGRAL PART OF THE LOADING OR UNLOADING PROCESS.

There are three decisions of this Court which outline the judicial history preceding this petition for cer-

tiorari. In the first of the three, *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 66 S.Ct. 872 (1948), this Court recognized that those doing a seaman's work and incurring a seaman's hazards were entitled to the warranty of seaworthiness and thus protected shore-based workers engaged aboard a vessel in work customarily performed by seamen. Six years later in *Alaska Steamship Co. v. Petterson*, 347 U.S. 396, 74 S.Ct. 601 (1954) the Court extended the humanitarian policy protecting these workers by holding that the vessel owner's absolute duty to provide seaworthy gear, equipment, and appliances is the same when applied to the gear, equipment, and appliances of the stevedoring contractor. Finally, in *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 83 S.Ct. 1185 (1963) the Court, agreeing with the "ineluctable logic" of the cases, stated that seaworthiness includes fitness for loading and unloading and held "that the duty to provide a seaworthy ship and gear including cargo containers applies to longshoremen unloading the ships whether they are standing aboard the ships or on the pier."

The Fifth Circuit Court of Appeals in the instant case took *Sieracki, Petterson* and *Gutierrez* as "the major constellations by which we steer our course in this case" and reached the unavoidable conclusion that the doctrine of seaworthiness protected Bill Law as he was "intimately involved in the process of loading a vessel, injured as he moved cargo from the back to the front of the dock."

It is submitted that the other Courts of Appeal of the United States considering analogous facts have reached the same conclusion based on the same rules

already formulated by this Court. See for example, *Gebhard v. SS Hawaiian Legislator*, 425 F.2d 1303 (9 Cir. 1970); *Deffes v. Federal Barge Lines, Inc.*, 361 F.2d 422 (5 Cir. 1966), cert. denied, 385 U.S. 969; *Spann v. Lauritzen*, 344 F.2d 204 (3 Cir. 1965), cert. denied 382 U.S. 938; *Thompson v. Calmar Steamship Corp.*, 331 F.2d 657 (3 Cir. 1964), cert. denied 379 U.S. 913; *Huff v. Matson Navigation Company*, 338 F.2d 205 (9 Cir. 1964), cert. denied 380 U.S. 943; *Hagans v. Ellerman and Bucknell Steamship Company*, 318 F.2d 563 (3 Cir. 1963). For decisions of United States District Courts see: *Byrd v. American Export Isbrandsten Lines, Inc.*, 300 F. Supp. 1207 (E.D. Pa. 1969); *Litwin Owicz v. Weyerhaeuser Steamship Co.*, 179 F. Supp. 817 (E.D. Pa. 1959); *Olvera v. Michalos*, 307 F. Supp. 9 (S.D. Tex. 1968).

In opposition to these opinions, Petitioner has brought to this Court's attention several decisions of lower Federal Courts supposedly in conflict with the holdings of the Fifth Circuit, and, broadening his search for conflict, Petitioner points to the Court's recent decision in *Nacirema Operating Co. Inc. v. Johnson*, 366 U.S. 212, 90 S.Ct. 347 (1969) as reason for review of the Fifth Circuit's well-reasoned opinion.

Nacirema, however, as Petitioner candidly concedes, deals with a problem of statutory construction in the interpretation of the Longshoreman and Harbor Workers Compensation Act, the Court framing the issue there to be: "(T)he single question of statutory construction presented by these cases is whether injuries to longshoremen occurring on piers permanently affixed to shore are compensable under the Longshore-

man and Harbor Workers Compensation Act of 1927." This Court answered that question in the negative and in spite of Petitioner's strained interpretation of that decision, its application must be limited to its holding.

Daniel v. Skibs A/S Hilda Knudsen, 368 F.2d 178 (3 Cir. 1966), affirming 253 F.Supp. 758 (E.D. Pa. 1966), is next cited as being in conflict with the Fifth Circuit's opinion in *Bill Law*. The Petitioner should take no comfort in *Daniel*, for, far from being in conflict with *Law*, it is clear that the District Court hearing the cause originally and the Third Circuit on Appeal both recognized that the same principles reiterated by the Fifth Circuit in *Law* were controlling. Further, far from holding that the warranty of seaworthiness did not apply to shore-based workers and gear intimately involved in the loading and unloading process, the District Court and the Third Circuit cited with approval and in fact as authority for their conclusion, the Third Circuit's own case of *Spann v. Lauritzen*, supra, wherein an entirely shore-based defective nitrate hopper injured an entirely shore-based longshoreman. The inescapable conclusion is that the same principles of law controlled in both instances even though the facts in *Daniel* prevented their application. It is clearly seen, then, that the law in the Third Circuit is the same as in the Fifth Circuit and that the Court there reached the same conclusions of law with commendable consistency.

Petitioner then turns to *Partenweederi M/S Belgrano v. Weigel*, 299 F.2d 897 (9th Cir. 1962), and in reply Respondent must counter that the Petitioner's problem is the same here as in *Daniel*. In *Belgrano*,

the Plaintiff, Weigel was a tractor driver whose job was to move railroad cars loaded with cargo to a point on a spur track where the cargo could be reached by the ship's gear. The District Court's finding for Weigel was reversed by the Ninth Circuit and the Appellate Court, noting that the Respondent presented expert testimony that seamen did not traditionally perform that type of work and that Weigel failed to present contrary proof, held, as a result, that he had failed to meet his burden of proof on that issue as a matter of law. Whatever validity the Ninth Circuit's decision in *Belgrano* may have had for Petitioner's position here, the Ninth Circuit itself has effectively disposed of in *Gebhard v. SS Hawaiian Legislator,* 425 F.2d 1303 (9 Cir. 1970), where, again, an entirely shore-based and unseaworthy straddle carrier injured an entirely shore-based longshoreman, the Court there holding that the warranty of seaworthiness did apply.

Neither, as is proposed by Petitioner, is the Fifth Circuit's opinion in the present case in conflict with its prior decision in *Kent v. Shell Oil Company,* 286 F. 2d 746 (5 Cir. 1961). In the *Kent* case the Fifth Circuit found its problems to be two-fold. "The first is the sufficiency of the proof of asserted unseaworthiness of the vessel and the equipment supposedly furnished by or adopted by the barge. The second is whether an assumed breach of such warranty extends to injuries sustained on shore by an employee of a third party performing services as an independent contractor for the vessel owner under circumstances in which the Louisiana Compensation Act would insulate such vessel owner from third party liability." *Kent,* supra, at page 748.

The case was decided on a question of Louisiana Law, the Court saying:

> "Since Louisiana forbids such recovery of damages against such a third party, it matters not whether the asserted third party claim rests on negligence of a kind known to the common law or that of a kind known to the civil law or on notions of unseaworthiness indigenous to the general maritime law." *Kent*, supra, at page 752.

After deciding the case as above, the Court went on to add the dictum quoted by Petitioner at page 16 of his brief. Respondent would urge that not only must this statement be considered dictum but that it was uttered two years prior to this Court's decision in *Gutierrez* and, further, that the Fifth Circuit has disposed of *Kent* by its decisions in *Deffes* and *Bill Law*.

Following his fruitless attempt to find dissension among the Appellate Courts where there is harmony, petitioner then turns to the decisions of the District Courts and specifically the companion cases of *Drumgold v. Plovda* and *Hyter v. D. B. Denig Naklihati T.A.S.* (E.D. Va., 1966) 260 F.Supp. 983. Respondent will not belabor the Court with needless comment on these cases. Suffice it to say that they are not decisions of Appellate Courts, and were effectively disposed of by the Fifth Circuit in the instant case.

The type of conflict between Circuit Courts of Appeals contemplated as a reason for granting certiorari by Rule 19(1) (b), 28 U.S.C. Rules of Supreme Court,

is as to matters of law, not as to conclusions which depend upon an appreciation of facts and circumstances which admit of different interpretations.

CONCLUSION

The Petitioner has demonstrated no conflict in the decisions of the various Circuit Courts of Appeal within the meaning of Rule 19(1) (b), 28 U.S.C. Rules of Supreme Court, and the questions of Federal Maritime Law presented remain clear and consistent in an unbroken pattern from *Sieracki*, *Petterson*, and *Gutierrez*. In granting certiorari in this case the Court would commit itself to a laborious case-by-case application of principles it has already established and precedent it has already announced.

The premises considered, it is respectfully submitted that the writ of certiorari should not be granted.

Respectfully submitted,

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J. Cecil Gardner
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Of Counsel

CERTIFICATE OF SERVICE

I, Ross Diamond, Jr., one of the attorneys for Respondent, do hereby certify that I have served a copy of the foregoing Brief in Opposition on the attorneys of record for the Petitioners and am mailing a copy of same to them properly addressed, postage prepaid on this ____ day of January, 1971.

ROSS DIAMOND, JR.
Attorney for Respondent
610 Van Antwerp Building
Mobile, Alabama 36601

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Supreme Court of the United States

OCTOBER TERM, 1970

70-54

No. ~~1092~~

VICTORY CARRIERS, INC., S.S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE PETITIONERS

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 1092

VICTORY CARRIERS, INC., S.S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

A. The opinion of the Court of Appeals entered on September 16, 1970 (A. 95) is officially reported at 432 F.2d 376.

B. The opinion of the District Court (A. 50) is not officially reported. It is unofficially reported at 1970 A.M.C. 397.

JURISDICTION

A. The judgment of the Court of Appeals was made and entered on September 16, 1970 (A. 95). On Sep-

tember 24, 1970, Petitioners filed timely motion for enlargement of time within which to petition for rehearing and on September 24, 1970, the Court of Appeals granted an enlargement of time to October 14, 1970, to file said petition for rehearing; on October 13, 1970, Petitioners filed in the Court of Appeals a petition for rehearing *en banc*, and alternatively, for rehearing. By order dated November 3, 1970 (A. 119), the Court of Appeals denied said petition.

B. On December 12, 1970, a petition for a writ of certiorari was filed in this Court, and on March 1, 1971, the writ was granted.

C. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES INVOLVED

The statute involved herein is 62 Stat. 496, 46 U.S.C. § 740, Extension of Admiralty Jurisdiction Act. This statute, as set forth in 46 U.S.C. § 740, reads as follows:

> "The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.
>
> In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and

consummated on navigable water: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage. June 19, 1948, c. 526, 62 Stat. 496."

QUESTION PRESENTED

The Respondent herein, Bill Law, was a fork lift machine operator who was working exclusively on the dock moving cargo from a point of dockside storage to a point on the dock from which it was subsequently loaded onto the vessel S.S. SAGAMORE HILL. He was injured while working on the dock when the overhead, or "headache", rack of the lift machine fell on him through no fault of the vessel.

The question presented for review is:

Does the warranty of seaworthiness owed by a vessel extend to the operator of a fork lift machine who is operating the machine exclusively upon the dock moving cargo from its position of dockside storage to

a point on the dock from which it is subsequently loaded onto the vessel and who is injured by reason of some fault in the lift machine and not by the vessel or its equipment?

STATEMENT OF THE CASE

On December 11, 1967, the Respondent, Bill Law, was employed by the Petitioner Gulf Stevedore Corp. (hereinafter referred to as "Gulf") as a fork lift machine operator to move aircraft landing mats from their position of storage on the dock to a position on the dock near the Petitioner vessel S.S. SAGAMORE HILL, a distance of some fifty (50) feet (A. 60-61, 90-91). The landing mats were not loaded directly onto the vessel from the fork lift machine being operated by the Respondent; he would set them down on the dock, and the mats would subsequently be loaded onto the vessel by other longshoremen by use of the vessel's gear and equipment (A. 90-91). The fork lift machine did not at any time go on board the vessel, but remained exclusively upon the dock (A. 92).

While the Respondent was transporting a bundle of mats from the dock storage area to the loading point, the overhead protection rack (commonly referred to as a "headache rack") of the lift machine came loose, fell and struck the Respondent (A. 69). None of the vessel's gear, equipment, or appurtenances were in any way involved with the loosening of the rack and the resulting accident (A. 90).

Bill Law subsequently filed a complaint in the United States District Court for the Southern District of Ala-

bama against the Petitioner, Victory Carriers, Inc. (hereinafter referred to as "Victory"), as owner of the S.S. SAGAMORE HILL, alleging that his injuries were caused by the unseaworthiness of the vessel and the negligence of Victory (A. 3-10). Victory answered Law's complaint (A. 13-17) and filed a third-party action against Gulf seeking indemnification from it (A. 18-23). Gulf filed its answer to the complaint of Law and to the third-party complaint of Victory (A. 33-41).

Gulf then took the discovery deposition of Respondent Bill Law (A. 55-94), and subsequently moved for summary judgment on the principal ground that the warranty of seaworthiness owed by a vessel did not extend to Respondent or to the fork lift machine which he was operating on the dock (A. 42-45). Victory moved for a summary judgment in its favor on the same grounds (A. 46), and Law filed a cross-motion for a summary judgment in his favor (A. 47-49). On July 15, 1969, the District Court entered its order granting the motions of Gulf and Victory for summary judgments and denying the cross-motion for summary judgment of Law (A. 50-54).

In its opinion the District Court held that Bill Law "was not engaged in work for the service of the ship and is not covered by the warranty of seaworthiness." (A. 52). The District Court further held that: "The Plaintiff was not engaged in the *actual* loading of the vessel at the time of the accident. It is easy to say that he was assisting or contributing in the loading of cargo aboard the vessel. But the same rationale can apply to innumerable persons who perform work

which is necessary or required to 'service' the ship for sea duty." (A. 52-53).

The Court of Appeals reversed the District Court by opinion dated September 16, 1970 (A. 95), and held that the fork lift machine being operated exclusively upon the dock to move cargo from a position of storage to a point on the dock from which it was subsequently loaded onto the vessel was in effect an appurtenance of the vessel to which the seaworthiness warranty extended. In support of its holding the Appellate Court cited its own decision of *Deffes vs. Federal Barge Lines, Inc.*, (5 Cir., 1966) 361 F.2d 422, cert. denied, 385 U.S. 969. The Court of Appeals further held that Law was engaged in loading the vessel and was entitled to the warranty of seaworthiness and relied on this Court's decisions of *Seas Shipping Co. vs. Sieracki*, 1946, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099; and *Gutierrez vs. Waterman Steamship Corp.*, 1963, 374 U.S. 858, 83 S.Ct. 1863, 10 L.Ed.2d 1082.

SUMMARY OF ARGUMENT

I.

The Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C. §740 did not extend maritime jurisdiction to an injury which is caused on the pier by pier-based equipment. This was expressly stated by this Court in *Nacirema Operating Company vs. Johnson*, 1969, 396 U.S. 212, 223. See also dissenting opinion in *Gebhard vs. S.S. Hawaiian Legislator*, (9 Cir., 1970) 425 F.2d 1303, at 1313. In *Gutierrez vs. Waterman Steamship Corp.*, 1963, 374 U.S. 858, this Court held

that maritime jurisdiction did extend to an injury caused by a ship which was felt ashore at a time and place not remote from the wrongful act; however, that decision did not conclude that maritime jurisdiction extended to an injury which occurs on the dock and is caused solely by defective shore-based equipment operated exclusively upon the dock.

The Respondent in the instant case was injured when the overhead protection rack of the fork lift machine he was operating exclusively upon the dock for the purpose of transporting cargo from its position of dock-side storage to a point on the dock from which it was subsequently loaded onto the vessel. None of the vessel's gear, equipment, or appurtenances were in any way involved with the accident; the same was caused solely by some defect in the shore-based equipment. The lift machine did not become an appurtenance of the vessel by reason of the fact it was used to transport cargo, which was subsequently loaded onto the vessel, on the dock. Consequently, the Respondent's maritime claim of unseaworthiness against the vessel and her owner is outside the Extension of Admiralty Jurisdiction Act, and for this reason, the judgment of the Court below should be reversed.

II.

The warranty of seaworthiness which was created by dictum in *The Osceola*, 1903, 189 U.S. 158, extended to shore-based workers injured on board a vessel in *Seas Shipping Co. vs. Sieracki*, 1946, 328 U.S. 85, and taken ashore in *Gutierrez vs. Waterman Steamship Corp.*, 1963, 374 U.S. 858, for injuries on the pier which

were caused by the vessel, does not extend to a worker injured on the pier by shore-based equipment which is used on the pier solely for moving cargo to a point alongside the vessel for subsequent loading onto the vessel.

The fact that the shore-based equipment is used to move cargo from dockside storage to a point on the dock from which it is subsequently loaded onto the vessel does not have the effect of making the shore-based equipment an appurtenance of the vessel so as to visit liability upon it under the seaworthiness doctrine. *Forkin vs. Furness Withy & Co.*, (2 Cir., 1963) 323 F.2d 638; *McKnight vs. N. M. Patterson & Sons*, (N.D. Ohio, 1960) 181 F.Supp. 434, aff'd, 286 F.2d 250 (6 Cir., 1960), cert. denied, 368 U.S. 913. The lift machine was nothing more than a conveyance to bring cargo to the ship and did not form a part of the loading process. Any different interpretation of the function of the lift machine in the instant case would have the effect of extending the seaworthiness doctrine to factual situations even more completely unrelated to the vessel.

Under the decision here for review, the vessel assumes a passive, secondary role in a shore-based injury, and the vessel's presence is apparently immaterial as the test now becomes, according to the Court below, whether the injured worker and the shore-based equipment were in some manner engaged in handling cargo ultimately destined for loading on a vessel. This was neither the intent or the holdings in *Sieracki* and *Gutierrez*.

While the Respondent was assisting in the overall loading of the vessel by moving cargo on the dock, he was not engaged in the actual loading process in the sense that it was part of the ship's work. *Daniel vs. Skibs A/S Hilda Knudsen,* (3 Cir., 1966) 368 F.2d 178, affirming 253 F.Supp. 758 (E.D. Pa., 1966); *Partenweederei, MS Belgrano vs. Weigel,* (9 Cir., 1962) 299 F.2d 897. The Respondent was not subjected to the "risks and hazards" of the sea as he drove the lift machine on the dock; his "risks and hazards" were no greater than any ordinary warehouseman may be expected to encounter, and the humanitarian policies underlying *Sieracki* would not be served by extending to him the warranty of seaworthiness.

There must be a beginning to the loading process and an ending to the discharging operation. A determination of when loading begins and when unloading terminates is material to guide lower courts in the application of the seaworthiness doctrine. The more realistic and logical approach is that loading commences with the physical act of lifting the cargo onto the vessel and terminates when the cargo is landed on the dock (or vehicle into which it is discharged) and the ship's gear has released it to its position on the dock. *Drumgold vs. Plovba,* (D. C. Va., 1966) 260 F.Supp. 983. The vessel becomes involved with the loading process (and has control of said loading) only when its gear or equipment is in physical contact with the cargo.

The affirmance by this Court of the opinion below would have the effect of extending the ambit of the seaworthiness doctrine beyond the limits of *Gutierrez,* and would make the vessel liable to individuals and

equipment on the shore under circumstances completely beyond any control of the vessel. Such result was not envisioned by the humanitarian policies underlying the seaworthiness doctrine, and the opinion of the court below should be reversed.

ARGUMENT

I.

The admiralty and maritime jurisdiction of the United States does not extend to a claim of unseaworthiness against a vessel by a longshoreman or shore-based worker who is injured on the pier by pier-based equipment, and not by any fault of the vessel or its equipment, under the Extension of Admiralty Jurisdiction Act.

The facts presented in this case are not in serious dispute. On the date of his accident, the Respondent Bill Law was employed by the Petitioner Gulf as a fork lift machine operator. Law, through the use of the lift machine, was moving aircraft landing mats from their point of dock storage to a position on the dock from which they would be subsequently loaded aboard the vessel by other longshoremen and the vessel's gear. At no time did the Respondent or the lift machine which he was operating go aboard the vessel. When the Respondent was some fifty (50) feet from the vessel, on the dock, the overhead protection rack of the lift machine came loose, fell, and struck the Respondent on the head. None of the vessel's gear or equipment caused the rack to fall on the Respondent. In summary, he was injured on the dock by pier-based

equipment through no fault of the vessel's gear, appurtenances and equipment.

The Court of Appeals, building on its own decision of *Deffes vs. Federal Barge Lines, Inc.*, (5 Cir., 1966) 361 F.2d 422, and this Court's decisions of *Seas Shipping Co. vs. Sieracki*, 1946, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099, and *Gutierrez vs Waterman Steamship Corporation*, 1963, 374 U.S. 858, 83 S.Ct. 1863, 10 L.Ed.2d 1082, held that (1) the lift machine was in effect an appurtenance of the ship, (2) that the Respondent was involved in the loading process of the vessel, and (3) he was within the scope of the warranty of seaworthiness. The court below gave no consideration to the Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C. § 740, or to the clear language of this Court regarding the applicability of this Act in *Nacirema Operating Company vs. Johnson*, 1969, 396 U.S. 212, 90 S.Ct. 347, 24 L.Ed.2d 371. (The Act and the *Nacirema Operating Company vs. Johnson* decision were raised in the Court of Appeals on Petitioners' petition for rehearing filed therein.)

Admittedly, the *Nacirema* decision was concerned with the issue of whether a longshoreman injured on the pier was entitled to benefits under the Longshoremen's and Harbor Workers' Act, 44 Stat. 1424, 33 U.S.C. §§ 901-950. However, this Court did discuss portions of the Extension of Admiralty Jurisdiction Act therein and commented upon the same as follows:

> " 'The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or

property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.'

By its very choice of language, the Act re-enforces the conclusion that Congress was well aware of the distinction between land injuries and water injuries and that when it limited recovery to injuries on navigable waters, it did not mean injuries on land. The Act no doubt extended the admiralty tort jurisdiction to ship-caused injuries on a pier. But far from modifying the clear understanding in the law that a pier was an extension of land and that a pier injury was not on navigable waters but on land, the Act accepts that rule and nevertheless declares such injuries to be maritime torts if caused by a vessel on navigable waters.

'"The Extension Act was passed to remedy the completely different problem that arose from the fact that parties aggrieved by injuries done by ships to bridges, docks, and the like could not get into admiralty at all. There is no evidence that Congress thereby intended to amend or affect the coverage of the Longshoremen's Act or to overrule Swanson v. Marra Bros., supra, decided just two years earlier. While the Extension Act may have the effect of permitting respondents to maintain an otherwise unavailable libel in admiralty, see Gutierrez v. Waterman S.S. Corp., 373 US 206, 10 L.Ed.2d 297, 83 S. Ct. 1185 (1963), the Act

has no bearing whatsoever on their right to a compensation remedy under the Longshoremen's Act.

"There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. *But even construing the Extension Act to amend the Longshoremen's Act would not affect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act.*" 396 U.S. at 221-223. (Emphasis added.)

Circuit Judge Wright in his dissenting opinion in *Gebhard vs. S.S. Hawaiian Legislator,* (9 Cir., 1970) 425 F.2d 1303, at 1313 commented on the foregoing language from *Nacirema* as follows:

"Justice White's observation could not have been casual or unintended. For the court below, whose judgment the Supreme Court reversed, had as an alternate ground of decision relied on the Extension Act to expand coverage under the Longshoremen's Act. Marine Stevedoring Corp. v. Oosting, 398 F.2d 900, 906 (4th Cir. 1968). Judge Sobeloff suggested that the alternative to so construing the Longshoremen's Act was the toleration of a series of 'harsh and incongruous' differences in treatment of similarly-situated harbor workers. Id. at 907. The point of Justice White's remark, then, was that even were the Longshoremen's Act construed as incorporating the Extension

Act, the incongruities feared by the Fourth Circuit would not be lessened. Uniform treatment of longshoremen's injuries could not be achieved, since *even under the Extension Act injuries on a pier resulting from pier-based equipment are not cognizable in admiralty* — even though they occur in connection with the loading or unloading of a ship. Justice White's construction of the Extension Act was thus central to his rejection of the reasoning below.

"I should have thought the Supreme Court's construction of the Extension Act sufficient to dispose of plaintiff's unseaworthiness claim. For it is conceded that the injury here occurred 'on a pier.' And the only equipment alleged to be not reasonably fit for its intended use is 'pier-based' — namely, the straddle carriers."

In *Gutierrez vs. Waterman Steamship Corp.*, 1963, 374 U.S. 858, 83 S.Ct. 1863, 10 L.Ed.2d 1082, this Court extended the applicability of the doctrine of seaworthiness to longshoremen injured on the pier and held that "the duty to provide a seaworthy ship and gear, including cargo containers, applies to longshoremen unloading the ship whether they are standing aboard the ship or on the pier." 376 U.S. at 215. In *Gutierrez* the longshoreman was injured on the pier when he slipped on beans which had spilled from defective bags discharged from the vessel. This Court also considered the Extension of Admiralty Jurisdiction Act therein and concluded:

> "We think it sufficient for the needs of this occasion to hold that the case is within the maritime jurisdiction under 46 USC § 740 when, as here, it is alleged that the ship owner commits a tort while or before the ship is being unloaded, and the impact of which is felt ashore at a time and place not remote from the wrongful act." 373 U.S. at 210.

This holding is not inconsistent with the language in *Nacirema* supra, to the effect that a longshoreman injured on the pier by pier-based equipment is outside the Extension Act. The factual situations are clearly different and distinguishable. If the vessel commits a tort, the impact of which is felt ashore, the Extension Act, under the holding of *Gutierrez*, is applicable; if the injury is caused on the pier by pier-based equipment, the Act, under *Nacirema*, is not applicable. The Extension Act by its own language extends the admiralty and maritime jurisdiction of the United States only to cases where the injury on land is caused by a vessel on navigable waters, and not to injuries on land caused by pier-based equipment.

Here, the Respondent's injury was admittedly not caused by any of the vessel's gear but was caused by some defect in the shore-based lift machine he was operating some fifty (50) feet away from the vessel. The Court of Appeals apparently disposed of any problem as to the involvement of the vessel's gear and appurtenances in the subject accident by simply concluding the lift machine, although operated exclusively on the pier, was an appurtenance of the vessel. In ar-

riving at this conclusion, the court below relied upon its own decision of *Deffes vs. Federal Barge Lines, Inc.*, (5 Cir., 1966) 361 F.2d 422, cert. denied 385 U.S. 969, wherein the court held that a defective shore-based marine leg used to unload grain from a barge made the barge unseaworthy.[1] In *Deffes* the injured longshoreman was working on board the barge and the marine leg extended into the vessel from the shore. Clearly, the case is distinguishable from the instant case where the lift machine moved exclusively on the pier and never came into contact with the vessel or its gear. The lift machine in the instant case was not, and did not become, an appurtenance of the SS SAGAMORE HILL; it was a mere means of shore-side conveyance used to move cargo from one point on the dock to another point on the dock. The lift machine was pier-based equipment and the Respondent was a pier-based worker; his injury occurred on the pier as a result of some alleged defect in the pier-based equipment. Consequently, the Respondent's maritime claim of unseaworthiness against the vessel is outside the Extension of Admiralty Jurisdiction Act, and for this

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[1]The various Circuit Courts are in sharp conflict on the issue of whether shore-based equipment used in the loading or discharging of a vessel comes within the scope of the warranty of seaworthiness. The extension of the warranty of shore-based equipment has been denied in the cases of *Forkin vs. Furness Withy & Co.*, (2 Cir., 1963) 323 F.2d 638; *McKnight vs. N. M. Patterson & Sons*, (6 Cir., 1960) 286 F.2d 250, cert. denied 368 U.S. 913; *Sherbin vs. S. G. Embiricos*, (E.D. La., 1962) 200 F. Supp. 874; *Henry vs. S.S. Mount Evan*, (D. Ct. Md., 1964) 227 F.Supp. 408. The extension has been approved in *Deffes vs. Federal Barge Lines, Inc.*, supra, *Spann vs. Lauritzen*, (3 Cir., 1965) 344 F.2d 204; *Huff vs. Matson Navigation Company*, (9 Cir., 1964) 338 F.2d 205.

reason, the judgment of the Court of Appeals should be reversed.

II.

The warranty of seaworthiness owed by a vessel does not extend to a shore-based worker who is injured on the dock by shore-based equipment, and not by the vessel and its equipment, while moving cargo from a position of dockside storage to a point on the dock from which it is subsequently loaded onto the vessel.

A. General Discussion.

Prior decisions of this Court have left little doubt that a shore-based worker who is injured on a vessel while in the service of the vessel is entitled to the warranty of seaworthiness which was created in the decision of *The Osceola*, 1903, 189 U.S. 158, 23 S. Ct. 483, 47 L. Ed. 460. In the landmark case of *Seas Shipping Co. vs. Sieracki*, 1946, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099, this Court held that the obligations of seaworthiness, traditionally owed by an owner of a ship to seamen, extended to longshoremen injured aboard a ship while doing ship's work. In *Pope & Talbot vs. Hawn*, 1953, 346 U.S. 406, 74 S. Ct. 202, the warranty was extended to all shore-based workers engaged in the ship's service on board the vessel; and in *Alaska S.S. Co. vs. Petterson*, 1954, 347 U.S. 396, 74 S.Ct. 601, 98 L.Ed. 798, the doctrine was held to include stevedore furnished equipment for use in the ship's service as well as the vessel's own equipment. See also *Italia Societa per Azioni di Navagazione vs. Oregon Stevedoring Co.*,

1964, 376 U.S. 315, 84 S.Ct. 748, 11 L.Ed.2d 732. Following a line of lower court decision,[2] this Court held in *Gutierrez vs. Waterman Steamship Corp.*, supra, that "the duty to provide a seaworthy ship and gear, including cargo containers, applies to longshoremen unloading the ship whether they are standing aboard ship or on the pier." 373 U.S. at 215.

In *Gutierrez*, and the lower court decisions relied on therein, the vessel was directly involved in the injury to the longshoreman on the pier. In *Gutierrez* the injury occurred on the pier as the result of defective cargo containers unloaded from the vessel; in *Strika vs. Netherlands Ministry of Traffic*, supra, use of an improper wire cable caused a hatch cover to fall on a longshoreman on the dock; in *Robillard vs. A. L. Burbank & Co.*, supra, a longshoreman on the dock was struck by cargo which was knocked from the deck of the vessel to the pier; and in *Hagans vs. Farrell Lines, Inc.*, supra, a longshoreman on the pier was struck by sacks of beans when a defective winch did not properly brake. *Gutierrez* left unanswered the question of whether the ship's duty to provide a seaworthy ship extends to those individuals who are injured while working exclusively upon the pier moving cargo for subsequent loading onto the vessel and utilizing equipment completely disconnected from the

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[2] ***Strika vs. Netherlands Ministry of Traffic***, (2 Cir., 1950) 185 F.2d 555; ***Robillard vs. A. L. Burbank & Co.***, (S.D.N.Y., 1960) 186 F.Supp. 193; ***Hagans vs. Farrell Lines, Inc.***, (3 Cir. 1956) 237 F.2d 477.

vessel. The rationale of *Gutierrez* is understandable in that the vessel was *directly* involved with the longshoreman's injury, i.e., cargo containers taken from the vessel immediately prior to the accident were defective. Here, the injury was caused by an allegedly defective shore-based fork lift machine[3] while the operator was moving cargo on the dock for subsequent loading onto the vessel. Contrary to *Gutierrez*, the lift machine had never been aboard the vessel; the machine did not go aboard the vessel; and the vessel's gear, equipment, appurtenances, and cargo were not in any manner responsible for the accident.

The Court below, after observing that *Seas Shipping Co. vs. Sieracki*, supra, and *Gutierrez vs. Waterman Steamship Corp.*, supra, were "the major constellations by which we steer our course in the present case", (A. 101), felt that disposition of two further legal obstacles were necessary for determination before reaching its conclusion that the Respondent came within the ambit of the vessel's duty of seaworthiness. First, the court below realized the necessity of holding the shore-based lift machine to be an appurtenance of the vessel, and second, it was necessary, in view of the principles enunciated in *Sieracki*, to find he was in the service of the ship. In its determination of these two issues, it is submitted the court below erred to reversal.

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[3]The District Court did not reach any decision on the question of any defect in the lift machine and stated a determination of this question was immaterial to the issue presented.

B. Shore Based Equipment.

As previously noted herein under the first point of argument, the Court of Appeals relied upon its own decision of *Deffes vs. Federal Barge Lines, Inc.*, (5 Cir., 1966) 361 F.2d 422, cert. denied, 385 U.S. 969, in holding the fork lift machine here involved was an appurtenance of the vessel. This conclusion was reached even though the lift machine was operated exclusively upon the dock and cargo was not loaded directly from the fork lift to the vessel. In *Deffes* the "shore-based" equipment used in the unloading process was a marine leg which extended from the dock into the barge; the longshoreman was on the barge when injured. The court below chose to align itself with the decisions of the Third and Ninth Circuits, *Spann vs. Lauritzen*, (3 Cir., 1965) 344 F.2d 204, and *Huff vs. Matson Navigation Company*, (9 Cir., 1966) 361 F.2d 422, and held in *Deffes* that "a defective marine leg used in unloading grain makes a barge unseaworthy." 361 F.2d at 427.

In a recent opinion of the court below *Chagois vs. Lykes Bros. Steamship Company, Inc.*, (5 Cir., 1970) 432 F.2d 388, it was held that a longshoreman, who was injured while working in a boxcar on the dock from which rice was being loaded by means of a permanently shore-based marine leg onto the vessel, was entitled to the warranty of seaworthiness. The longshoreman was injured when a rotating auger (a device used in the boxcar to channel rice toward the boxcar door) which he was operating struck the boxcar floor and threw him off balance. The court, relying on its opinion in the instant case, and other cases, held

that the longshoreman's work when he was injured was an essential part of an unbroken sequence of moving the rice from the pier to the ship. Thus, the court below has again extended the seaworthiness doctrine further inland and held that a device used on the shore which was apparently separate from the marine leg which extended into the vessel was an appurtenance of the vessel although it does not appear the device was itself defective.[4]

Deffes, Chagois, and the instant case are all diametrical departures from the Fifth Circuit's decision of *Kent vs. Shell Oil Company,* (5 Cir., 1961) 286 F.2d 746. In *Kent* a truck driver who was injured while delivering a cargo of pipe to a barge was denied the seaworthiness warranty by the court below. The court said:

> "Where the injuries are sustained wholly ashore and are caused by a thing not a part of a vessel or its appurtenances, the failure or deficiency of such facility is not deemed either to constitute unseaworthiness or give rise to any recovery under the doctrine of unseaworthiness. Fredericks vs. American Export Lines, 2 Cir., 1955, 227 F.2d 450, 454, 1956 A.M.C. 57." 286 F.2d at 752.

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[4]In a more recent opinion from the Court of Appeals, *Johnson vs. Oil Transport Company, Inc.,* (5 Cir., 1971) ____ F.2d ____ (decided March 12, 1971), the instant case was cited in the dissenting opinion of Chief Judge Brown for the proposition that a ship owner is accountable for the seaworthiness of devices located and used on land.

It is interesting to note that the Fifth Circuit has never expressly overruled *Kent vs. Shell Oil Company*, supra. It is submitted that the foregoing quote from *Kent* is a correct statement of the law applicable to the instant case and is in accord with the language of this Court in *Nacirema Operating Company vs. Johnson*, supra, wherein it was stated that:

> "But even construing the Extension Act to amend the Longshoremen's Act would not affect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act." 24 L.Ed.2d at 379-380.

Gutierrez, in taking the seaworthiness doctrine ashore, did not alter the basic maritime principle that injuries sustained wholly ashore and which are caused by a thing not a part of the vessel or its appurtenances do not fall within the ambit of the seaworthiness doctrine.

Two other Circuits, the Second and Sixth, have held that the warranty of seaworthiness does not extend to shore-based equipment. *Forkin vs. Furness Withy & Co.*, (2 Cir., 1963) 323 F.2d 638, and *McKnight vs. N. M. Patterson & Sons*, (N.D. Ohio, 1960) 181 F.Supp. 434, aff'd 286 F.2d 250 (6 Cir., 1960), cert. denied, 368 U.S. 913. This issue has not been decided by this Court, and there remains a direct conflict in the Circuit Courts on the question of whether the warranty of unseaworthiness extends to shore-based equipment. A determination by this Court that the warranty does not so extend would unquestionably have the result of reversing the Court of Appeals in the instant case because if the

warranty does not extend to shore-based equipment, it clearly would not extend to the exclusively shore-based lift machine here involved.

It is submitted that even in view of the decisions of *Deffes*, *Spann*, and *Huff*, the lift machine here involved was not, and did not become, an appurtenance of the vessel. The lift machine was used exclusively upon the dock to move cargo from dockside storage to a point on the dock from which it was subsequently loaded onto the vessel by other longshoremen by use of the ship's gear. The process was analogous to the old horse drawn wagon which in days gone by would move alongside the vessel on the dock for purposes of making its cargo available to the ship's gear. The wagon was supplanted by the truck, and now the fork lift truck tends to supplant the truck. This equipment (when used on the dock), contrary to the conveyor belts and similar mechanisms running into the vessel from ashore, is used to bring cargo to and from the ship and does not form a part of the loading or discharging process.

Under the holding of the Court of Appeals, any means of conveyance of cargo destined for shipment aboard a vessel would fall within the ambit of the seaworthiness doctrine; hence, the truck which moves far inland carrying cargo destined for vessel shipment, the train which moves inland toward the port with cargo labeled for vessel shipment, and their respective operators would apparently all fall within the ambit of the doctrine. Obviously, this was not, and is not, the

intent of *Sieracki* and its long line of descendant decisions.

Again, the now classic question is posed: To what limits does the seaworthiness doctrine extend?

Here, we have a vessel whose equipment, property, and crew were for all intents and purposes, reasonably fit for its intended use; the defective appurtenance complained of by the Respondent was a shore-based lift machine over which the vessel had absolutely no control. This was not defective equipment brought aboard the vessel by the stevedore, cf. *Alaska S.S. Co. vs. Petterson,* (1954) 347 U.S. 396, 74 S.Ct. 601, 98 L.Ed. 798, but was equipment used solely on the dock for moving cargo. In this Court's recent decision of *Usner vs. Luckenbach Overseas Corporation,* (1971) ____ U.S. ____, 39 L.W. 4146, it was held that "it would be equally erroneous here, where no condition of unseaworthiness existed, to hold the ship owner liable for a third party's single and wholly unforeseeable act of negligence." It is submitted that similar reason and logic compels the conclusion that a ship owner and its vessel should not be held liable for an accident which occurs on the dock as a result of defective shore-based equipment whidh is being used solely for the purpose of transporting cargo on the dock and over which the vessel has no control.

In *Gutierrez,* this Court noted that various far-fetched hypotheticals were raised such as a suit in admiralty for an ordinary automobile accident involving a ship's officer on ship business in port or for

someone's slipping on beans that continued to leak from defective bags in Denver. These hypotheticals have been brought one step closer to reality by the Court of Appeals' decision in the instant case. The District Court in the instant case was likewise concerned with hypotheticals and posed the questions: "Would a truck driver who drives to the dock in his truck and unloads freight which in turn will become cargo for a vessel be entitled to a seaworthy vessel? Would his truck be an appurtenance to the ship? The Court thinks not." (A. 52). The Court of Appeals left unanswered the question of whether a longshoreman who is instructed to drive a truck many miles inland on a mission for his employer would be entitled to the warranty of seaworthiness and stated: "If such a case is to arise in the future, it should be decided then, not now." (A. 115). As a practical matter, the court below has invited further litigation. Numerous claims may now be expected to be forthcoming as the *Sieracki* doctrine is once more pushed further inland. Under the rationale of the Court of Appeals' decision, a vessel still at sea will owe her warranty of seaworthiness to those workers on the shore who move cargo to dockside in anticipation of her arrival, or conversely, to those workers who move cargo into the warehouses and storage areas by lift machines, or other means of conveyance, following her departure. Conceivably, under the opinion of the court below, if a vessel still several miles at sea radios her expected arrival hour, and on shore the workers move her cargo to the pier in anticipation of loading, the vessel, although still at sea, may breach her warranty of seaworthiness to those who may be injured in moving her cargo in preparation for loading.

Clearly, under the case here for review, the vessel now takes a secondary, passive role in the shore-based injury; the vessel's presence is apparently immaterial as the test now becomes, according to the Appellate Court, whether the injured worker and the shore-based equipment were in some manner engaged in handling cargo ultimately destined for loading onto a vessel. It is submitted this was neither the intent nor the holding of this Court in *Gutierrez*. The shore-based lift machine being operated by the Respondent at the time of his injury was not, and did not, become an appurtenance of the SS SAGAMORE HILL, and the Court of Appeals' holding in this respect should be reversed.

C. Service of the Ship.

The Court of Appeals, in its second step necessary to hold the Respondent entitled to the warranty of seaworthiness herein, erroneously concluded that he was engaged in loading the vessel. The District Court had held:

> "It is easy to say that he was assisting or contributing in the loading of the cargo aboard the vessel. But the same rationale can apply to innumerable persons who perform work which is necessary or required to 'service' the ship for sea duty. The liability of the ship is not unlimited. A line must be drawn." (A. 53).

In *Daniel vs. Skibs A/S Hilda Knudsen*, (3 Cir., 1966) 368 F.2d 178, affirming 253 F.Supp. 758 (E.D. Pa., 1966)

the court declined to extend the seaworthiness doctrine to a longshoreman who was injured in a warehouse when a pulley rope used to take cargo from a railroad flatcar broke causing a block to strike and injure him. The district court in Daniel said:

> "While Plaintiff's work may have contributed to the unloading process in a philosophical sense, it was not unloading in the sense that it was part of the ship's work. We are aware that the recent trend of decisions in this Circuit and the Supreme Court has been to widen the ambit of seaworthiness coverage. However, there has to be an end somewhere of the unloading process in the sense of liability imposing ship's work. 'Clearly the maritime jurisdiction extended to the act of reaching into the vessel and removing cargo. Such removal, having a beginning, had to have an end.' Spann vs. Lauritzen, 344 F.2d 204, 206 (C.A. 3, 1965)." 253 F.Supp. 758, at 762.

Further in the opinion the District Court said (253 F.Supp. at 762):

> "As pointed out above, the basis for the development of the warranty was to protect against maritime hazards those persons exposed to such hazards who are unable to protect themselves from the perils involved. The plaintiff here was completely shore-based. His work was ashore and he had no contact, remote or otherwise, with the ship. There is no more need for the development of a protective

shield for those in plaintiff's then occupation than there is for those engaged in any other industrial occupation. Plaintiff was subject to no particular maritime hazard, nor indeed, to any hazard that the ordinary warehouse workers would not encounter."

In *Partenweederei, MS Belgrano vs. Weigel,* (9 Cir., 1962) 299 F.2d 897, a plaintiff was struck by a ship's crane while operating a tractor that was pulling a loaded railroad car to the edge of the dock to get it within reach of the ship's loading gear. The Ninth Circuit Court of Appeals held the Plaintiff was not "loading" the vessel and said:

"The evidence of this case relating to the nature of libellant's work is not in dispute. The libellant was driving a tractor on the dock. His job was to push or pull railroad cars loaded with lumber up to a point on the spur track where the lumber could be reached by the ship's loading gear. He did not participate in loading the lumber onto the vessel or in stowing it. He had nothing to do with ship's tackle nor did his work require him to perform any service aboard the ship. His work was performing solely on the dock and in an operation preliminary to, but separate from, the work of loading the lumber onto the vessel." 299 F.2d 897, at 902.

The court below held that Respondent "was subjected to the risks and hazards of loading the ship"

(A. 115), and that he was "intimately involved in the process of loading a vessel" (A. 116). It is submitted that Respondent was neither subjected to the risks and hazards of loading a ship nor was he intimately involved in the loading process. The humanitarian policy which underlies the doctrine of seaworthiness was extended to longshoremen in *Sieracki* because over the years it had evolved that longshoremen were performing loading and discharging functions traditionally performed by seamen. Inasmuch as the seaman had been afforded the remedy of an action for seaworthiness, it was logical to extend the same remedy to the shore-based worker who assumed his duties on the vessel. However, it must be remembered that the doctrine was fostered to afford protection to the seaman who was subjected to the risks and perils of the sea who were unable to protect themselves from such perils and risks. The Respondent here was not subjected to any risks or perils of the sea; he was subjected to no greater risk than any other industrial worker nor to any greater hazard than any ordinary warehouseman may be expected to encounter. His job was to move cargo from a point of storage to a point on the dock from which it was subsequently loaded onto the vessel; his "risks and hazards" were no greater than those of a lift operator in any warehouse in any part of the country who moves cargo from a point of storage out onto the loading dock from which it is subsequently loaded onto a truck or boxcar. Certainly, the lift operator in the latter illustration is protected by no shield comparable to the doctrine of seaworthiness.

Admittedly, the Respondent was a member of a longshore gang some of whose members were working on board the vessel and other members were working on the pier. The Court of Appeals was hesitant to withhold the seaworthiness doctrine from the Respondent, who was working on the pier, when his brethren on the vessel would be entitled to said doctrine. This Court in *Nacirema Operating Company vs. Johnson*, supra, was confronted with the identical question of whether the longshoreman injured on the pier should receive the benefits of the Longshoremen's and Harbor Workers' Act, 44 Stat. 1424, 33 USC §§ 901-950, when his fellow worker on the vessel was entitled to the benefits of said Act, and, even in view of the apparent "harsh and incongruous" treatment of similarly-situated longshoremen, denied the benefits of the Act to the pier-based worker. Here, the title of the Respondent as a longshoreman or his status as a member of a longshore gang should play no role in a determination of whether he is within the ambit of the seaworthiness doctrine.

In the case of *Drumgold vs. Plovba* and *Hyter vs. Deniz Naklihati T.A.S.*, (E.D. Va., 1966) 260 F.Supp. 983 (two cases) quoted at length in the Appellate Court opinion (A. 103-109), the court declined to extend the warranty of seaworthiness to a longshoreman (Hyter) on the dock who was struck by a fork lift machine which was moving cargo from the dock to a storage area and to a longshoreman (Drumgold) who was injured when a truck, which was using its boom to move shifting boards near the vessel for subsequent loading onto the vessel, collapsed into the water. The court held the unloading process had ter-

minated in *Hyter's* case and that the loading process had not commenced in *Drumgold.* The plaintiff Hyter had argued that *Spann vs. Lauritzen,* supra, *Deffes vs. Federal Barge Lines, Inc.,* supra, and *Huff vs. Matson Navigation Company,* supra, extended the seaworthiness doctrine to the lift machine. Relying on *Fredericks vs. American Export Lines,* (2 Cir., 1955) 227 F.2d 450, the court declined to extend the doctrine. In its opinion, 260 F.Supp. at 986, the court said:

> "The plaintiffs in these cases are urging a further expansion of the *Huff, Spann,* and *Deffes* doctrine. They urge, and not without merit, that if the longshoreman is in any manner engaged in the service of the ship, the warranty of seaworthiness applies if such service is anywise connected with the contemplated loading or the contemplated removal from the pier apron of cargo already on the pier for the purpose of stowage in a warehouse or for any other transfer purpose."

> "Assuming without deciding the correctness of the rulings in *Huff, Spann,* and *Deffes,* this Court is not of the opinion that the seaworthiness doctrine can be so extended. For example, the longshoreman may be technically in the service of the ship if he is instructed to take a truck for the purpose of going into the city to secure a rope or wire necessary in connection with the loading or unloading operations of a particular vessel. While so engaged the brakes on the truck become defective and, at a point many miles from the

> vessel, the longshoreman is injured by reason of an accident. Plaintiffs argue that the truck's defective brakes would render the vessel unseaworthy. In effect, what plaintiffs wish to do is to extend to the injured longshoreman all of the benefits accruing to the injured seaman under the Jones Act."

In discussing the application of *Gutierrez* to the facts of the *Drumgold* and *Hyter* cases, the court said:

> "In *Gutierrez* the injury to the longshoreman was sustained when he slipped on loose beans spilled on the dock occasioned by an unseaworthy condition of the cargo while aboard the vessel, with a resultant spillage during unloading operations. We agree that *Gutierrez* clearly extends the seaworthiness doctrine to longshoremen 'loading or unloading' a ship, whether aboard the ship or on the pier. We do not, however find that the loading operation in *Drumgold* had commenced — and we further find that the unloading operation in *Hyter* had terminated — when the respective longshoremen were injured. Manifestly the items of equipment giving rise to the injuries were never intended to be used aboard ship; they were, at best, mere conveyors to bring equipment needed to the ship's side (*Drumgold*), or to remove already unloaded cargo to another area (*Hyter*). We find no authority which would cause us to hold that every piece of equipment and every activity leading up to or following the loading or unloading operation

must be covered under the warranty of seaworthiness. We are concerned with the ship and the ship's equipment attendant to the *ship's duty to load and unload.* If such assumption is incorrect we will be constantly confronted with claims alleging unseaworthiness of a vessel because of cargo, about to be loaded aboard ship, which falls in a warehouse on the pier thereby injuring an employee of the stevedoring concern. In *Drumgold* we do not believe that the loading operation, insofar as the warranty of seaworthiness is concerned, commenced until the shifting boards were in the process of being physically moved from the stevedore's truck to the deck. In *Hyter* we feel that the unloading terminated, insofar as the warranty of seaworthiness is concerned, when the bale of cork in a seaworthy condition was properly detached by the slingers and was at rest on the pier awaiting removal to another area. It was at these points that the warranty of seaworthiness started and stopped. Such a holding does no violence to *Gutierrez, Huff, Spann, Deffes,* and *Metzger,* all relied upon by the plaintiffs. It merely places a reasonable limitation upon the extent of the seaworthiness warranty."

The court below held that *Drumgold vs. Plovba,* supra, represented a "minority view" which defined loading "in an exceedingly narrow and mechanical fashion, limiting it to those activities which begin with the physical act of lifting the cargo onto the

vessel." (A. 103). The Court of Appeals chose to define "loading" and "unloading" as what it referred to "in a realistic sense rather than as hypertechnical terms of art." (A. 114). In so holding, the court relied upon *Byrd vs. American Export Isbrandtsen Lines, Inc.*, (E.D. Pa., 1969) 300 F.Supp. 1207, among other cases[5] wherein the Pennsylvania district court held that a longshoreman injured on the dock while moving a lift machine (by use of another lift machine) for subsequent loading onto a vessel was engaged in a "loading operation". The court in the *Byrd* decision had quoted with approval its own case of *Litwinowicz vs. Weyerhaeusen Steamship Co.*, (E.D. Pa., 1959) 179 F.Supp. 812, 817-818, as follows:

> "The term loading is not a word of art, and is not to be narrowly and hypertechnically interpreted. Plaintiffs' actions at the time of the accident were direct, necessary steps in the physical transfer of the steel from the railroad car into the vessel which constituted the work of loading."

Consequently, two divergent views have developed in the lower courts; *Drumgold* clearly establishes that there must be a beginning and an ending to the load-

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[5]*Gebhard vs. S.S. Hawaiian Legislator*, (9 Cir., 1970) 425 F.2d 1303; *Thompson vs. Calmar Steamship Corp.*, (3 Cir., 1964) 331 F.2d 657, cert. denied, 379 U.S. 913; *Hagans vs. Ellerman & Bucknall Steamship Co.*, (3 Cir., 1963) 318 F.2d 563; *Olvera vs. Michalos*, (S.D. Tex., 1968) 307 F.Supp. 9. To these cases may now be added *Chagois vs. Lykes Bros. Steamship Company, Inc.* (5 Cir., 1970) 432 F.2d 388.

ing and unloading operations,[6] while *Byrd*, followed by the court below, and other decisions,[7] would extend the doctrine of seaworthiness ashore to a land-based worker moving cargo on the dock. It is submitted the more rational and logical view is that illustrated by *Drumgold*. *Sieracki* was concerned with the protection of those who were performing tasks traditionally performed by seamen in extending to them the doctrine of a seaworthy vessel and its appurtenances; *Gutierrez* simply extended the ambit of the seaworthiness doctrine to injuries occurring on the pier when caused by the vessel. The Respondent in this case was neither doing a seaman's work nor incurring a seaman's hazards; he was on the pier when hit by the overhead protection rack of the shore-based lift machine he was operating. The vessel, except for the fact she lay alongside the dock, had absolutely no connection with the Respondent's accident.

An adoption of the view expressed by the *Byrd* decision and the court below would have the effect of further expanding the seaworthiness doctrine ashore and would subject a vessel to liability under the guise of unseaworthiness for accidents completely unrelated to the vessel and which in no manner involve any of her gear and equipment. It would as a matter of course follow that liability would be visited upon the injured

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[6]cf. *Young vs. Chevron Oil Company*, (E.D. La., 1970) 314 F.Supp. 1248; *DiPaola vs. International Terminal Operating Co.*, (E.D. N.Y., 1968) 294 F.Supp. 736; *Cannida vs. Central Gulf Steamship Corporation*, (E.D. Pa., 1970) 317 F.Supp. 873; *Daniel vs. Skibs A/S Hilda Knudsen*, supra; *Partenweederei MS Belgrano vs. Weigel*, supra.

[7]See cases cited in footnote 5.

employee's stevedore employer under *Ryan Stevedoring Co. vs. Pan-Atlantic Steamship Corp.*, 1956, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133, for the shore-based injury caused by shore-based equipment. Unquestionably, additional litigation would be forthcoming as the once ship-bound seaworthiness doctrine encompasses workers heretofore excluded and for whom the doctrine was never intended.

Petitioners do not endeavor here to seek a reversal of *Gutierrez vs. Waterman Steamship Corp.*, supra, nor do they seek an avoidance of vessel liability where the vessel itself, or its own appurtenances, has caused an injury on the pier. Petitioners do seek a limitation of the principles enunciated in *Gutierrez* to those instances where the vessel itself, as opposed to shore-based equipment over which the vessel has no control, causes the injury. The holding of the Court of Appeals that a longshoreman injured on the pier by pier-based equipment should be reversed.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed and the cause remanded with direction to affirm the judgment of the district court.

Respectfully submitted,

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PROOF OF SERVICE

I, W. BOYD REEVES, one of the attorneys for the Petitioners herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of April, 1971, I served three copies of the foregoing Brief of Petitioners on Bill Law, Respondent herein, by mailing the same in a duly addressed envelope, with first class postage prepaid, to Honorable Ross Diamond, Jr., 610 Van Antwerp Building, Mobile, Alabama, 36602, and to Honorable Joseph B. Stahl, 804 Baronne Building, 305 Ba-

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OCTOBER TERM, 1970

70-54

No. ~~1092~~

VICTORY CARRIERS, INC., S. S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE RESPONDENT

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 1092

VICTORY CARRIERS, INC., S. S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,

Petitioners,

versus

BILL LAW,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE RESPONDENT

QUESTION PRESENTED

The Respondent Bill Law was a member of a longshore gang and employed by an independent stevedore under contract to load the SS SAGAMORE HILL. His job was to move cargo with a fork lift machine from a pile on the dock near the ship to the "hook-up" point where it was lifted aboard the ship. He was injured when the "headache" rack of the lift machine fell on him.

QUESTION FOR REVIEW

Where a longshoreman is directly and intimately involved in the loading of a vessel on navigable waters and is using equipment which is a necessary and essential tool in the loading process does the warranty of seaworthiness protect such a longshoreman when he is injured by a defect in the equipment he is using.

STATEMENT OF THE CASE

As the Petitioner has stated in his brief at page 10, the facts in this case are not in serious dispute. And for that reason Respondent would not feel constrained to restate the case. However, we feel that it is necessary to bring to the Court's attention certain aspects of Petitioners relation of those facts which he has characterized in a way which may be misleading, although Respondent has no doubt such was not his intent.

First; at page four he has said "The landing mats were not loaded directly onto the vessel from the fork lift machine being operated by the Respondent; he would set them down on the dock, and the mats would subsequently be loaded onto the vessel by other longshoremen by use of the vessel's gear and equipment (A. 90-91)."

Respondent insists that Petitioner had injected a legal conclusion into what should be an objective statement of fact; to-wit, by saying that the mats were "subsequently loaded onto the vessel by other longshoremen" he infers that Respondent was not "load-

ing" the cargo. We submit that the term "loading" is a word which has received a legal definition and that whether or not Respondent was engaged in the "loading" process should be left to the determination of this Court. Further, the Petitioner's statement should not be taken to mean the Respondent was moving cargo from one place of storage on the dock to another place of storage. The Respondent's testimony shows that he was moving the cargo from its place of storage directly to the hook-up point where it was attached to the winch cables and taken aboard as part of a continuous process (A. 61, 90, 92.).

Second; at the same page (4) Petitioner has stated that "None of the vessel's gear, equipment, or appurtenances were in any way involved with the loosening of the rack and the resulting accident (A. 90)." As Petitioner himself has pointed out, this is one of the questions this Court must determine, i.e., whether this lift machine was an "appurtenance" of the ship. Therefore this statement commits the same transgression upon this Court's prerogative as the first mentioned.

SUMMARY OF ARGUMENT

The admiralty jurisdiction of the United States Courts may be envoked either under the General Maritime Law, (*Gebhard v. S.S. Hawaiian Legislator*, 425 F.2d 1303 (9 Cir. 1970), *Gutierrez v. Waterman Steamship Corp*, 373 U.S. 206, 83 S. Ct. 1185 (1963)) or under the Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C. 740.

Under the General Maritime Law jurisdiction in unseaworthiness cases is established when a longshoreman pleads all the elements of his cause of action. That is; (1) that he was in the service of a vessel on navigable waters (2) that he was injured by an appurtenant appliance of the vessel, and (3) that the appliance was not reasonably fit for its intended use. Such a cause of action necessarily possesses the necessary maritime status or maritime relation to establish jurisdiction. *Gebhard v. S.S. Hawaiian Legislator,* 425 F.2d 1303 (9 Cir. 1970); *Gutierrez v. Waterman Steamship Corp.,* 373 U.S. 206, 83 S. Ct. 1185 (1963); *Strika v. Netherlands Ministry of Traffic,* 185 F.2d 555 (2 Cir. 1950).

Jurisdiction in Admiralty unseaworthiness actions may also be based on the Extension of Admiralty Jurisdiction Act, 46 U.S.C. 740. Jurisdiction under the Act is dependent on an injury being "caused by" a vessel on navigable waters. Where equipment is directly used in the loading process of such vessel and is an intimate and integral tool in the loading operation it becomes an appurtenant appliance in the service of the vessel and if, by reason of a defect in that equipment injury results, such an injury, is "caused by" the vessel within the meaning of the Extension Act.

The only meaningful test to determine whether the warranty of seaworthiness protects the Respondent Bill Law is to ask if he was in the service of the vessel and if he was injured by an appurtenance of the vessel. Whether the Respondent was in the service of the vessel depends upon whether he was engaged in loading the vessel. Properly, the same questions must be asked

in deciding whether the equipment, being used by one in the service of a vessel, must conform to the standard required by the warranty of seaworthiness. That is to say if injury results from equipment which is in the service of the vessel, then that equipment should conform to the standards of the warranty. It is irrelevant that the equipment is not a physical agency of the vessel and is likewise irrelevant that the equipment does not come in physical contact with the vessel when the injury occurs. Neither is it material, in terms of the unseaworthiness doctrine, that the shipowner does not have the power to inspect or control the injury producing agency.

Bill Law was using a fork lift machine to move cargo from its place of storage fifty feet from the ship to the hook-up point at ship-side. From there the cargo was taken directly aboard. While so engaged the protective rack on the machine fell on him and he was injured. The Fifth Circuit Court of Appeals was correct in holding, (1) that the work lift machine was an appurtenance of the vessel, and (2) that Bill Law was an integral part of the loading process and therefore within the warranty of seaworthiness.

I

ARGUMENT

Where A Longshoreman Is Engaged In Loading A Ship On Navigable Waters And Is Injured By Equipment Used To Load The Ship, He, And The Equipment, Are In The Service Of The Ship And He May Envoke The Admiralty Jurisdiction Of The Federal Courts Under The General Maritime Law Or Under The Extension Of Admiralty Jurisdiction Act.

The Petitioner has stated his argument so that it appears there are two distinct and independent issues before the Court for consideration. He has begun by denying that Respondent is entitled to envoke the Admiralty Jurisdiction of the District Court and in Part II of his brief he attempts to dissect the substantive aspects of the Respondent's cause of action to the conclusion that no cause of action exists.

Respondent protests this attempt to divide what has become the indivisible. Our position is simply stated: If a plaintiff pleads all the elements of his unseaworthy cause of action then, a fortiori, there is admiralty and maritime jurisdiction under the general maritime law. *Gebhard v. S.S. Hawaiian Legislator*, 425 F.2d 1303 (9 Cir. 1970). We would have thought that, at least since *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 83 S. Ct. 1185, 10 LEd2d 297 (1963), this was so well founded and fundamental as to require no elaboration. To consider the point otherwise simply begs the question.

To be sure, under the early rules of admiralty tort jurisdiction the "situs" or "locality" test of jurisdiction was a question which could be raised separately and independently from the substantive aspects of an unseaworthiness claim. There, so long as the injury was consummated on "land" or on a dock (an extension of the land) there was no jurisdiction and the inquiry ended at that point. The Plymouth, 3 Wall. 36, 18 LEd 128. The Courts of Admiralty were without the power to take cognizance of the case. But cf. *Atlantic Transport Company of West Virginia v. Imbrovek*, 234 U.S. 52, 58 LEd 1208 (1914).

Respondent strongly urges that in unseaworthiness cases *Gutierrez* and the cases following have made the "situs" or "locality" test of admiralty jurisdiction of historical interest only. In its place the general maritime law has developed a realistic ". . . . tort of unseaworthiness (which) arises out of a maritime status or relation and is therefore 'cognizable by the maritime (substantive) law whether it arises on sea or on land' ". The word (which) supplied by the writer. *Gutierrez*, supra; *Gebhard v. S.S. Hawaiian Legislator*, 425 F.2d 1303 (9 Cir. 1970), *Strika v. Netherlands Ministry of Traffic*, 185 F.2d 555 (2 Cir. 1950), cert. denied 341 U.S. 904 (1951) and see *O'Donnell v. Great Lakes Dredge and Dock Company*, 318 U.S. 36, 63 S. Ct. 488 (1943), *Swanson v. Marra Bros.*, 328 U.S. 1, 66 S. Ct. 869 (1946), *Pope & Talbot v. Hawn*, 346 U.S. 406 74 S.Ct. 202 (1953), *Hagans v. Ellerman & Bucknall S.S. Co.*, 318 F.2d 563 (3 Cir. 1963), *Chagois v. Lykes Bros. Steamship Co.*, 432 F.2d 388 (1970).

With the situs test thus eliminated in unseaworthiness cases:

> "Admiralty jurisdiction exists whenever the petitioner has successfully pleaded all the elements of the tort: (1) that his work was 'in the ships service' and that the warranty of seaworthiness thereby extended to him (Gutierrez v. Waterman S.S. Company (1963) 373 U.S. 206, 214-215, 83 S. Ct. 1185, 10 LEd 2d 297), (2) that he was injured by a piece of equipment not reasonably fit for its intended use (Mitchell v. Trawler Racer, Inc., (1960) 362 U.S. 539, 550, 80 S. Ct. 926, 4 LEd 2d 941) and (3) that the piece of equipment was a part of the ships equipment or an appurtenant appliance. (Huff v. Matson Navigation Co. (9 Cir. 1964), 338 F.2d 205, cert. denied (1965) 380 U.S. 943, 85 S.Ct. 1026, 13 LEd 2d 963). Such an unseaworthiness claim would necessarily possess the requisite maritime status or 'relation', and admiralty jurisdiction would exist regardless of the locality of the injury". *Gebhard v. S.S. Hawaiian Legislator,* supra.

It has been made clear in Gutierrez that the Extension of Admiralty Jurisdiction Act, 46 U.S.C. 740, 62 Stat. 496 and the "status" or "relation" basis of jurisdiction are distinct principles, either of which will support jurisdiction. There, this Court specifically agreed with Judge Learned Hand's reasoning in *Strika v. Netherlands Ministry of Traffic,* 185 F.2d 555 (2 Cir. 1950).

> "Public Law 695 of June 19, 1948 has now probably laid all such doubts, but we think that it was not necessary in order to support a recovery in this particular situation. *Strika,* supra. ... From this the defendant argues that since an action upon such as implied warranty is only a tort, the maritime law can have no jurisdiction over a breech of it occurring upon land; that being, of course, an accepted constitutional limitation upon maritime law. We should have found this as serious obstacle, were it not for *O'Donnell v. Great Lakes Dredge & Dock Co.,* supra, and the *ratio dicidendi* of *Swanson v. Marra Brothers, Inc.,* supra; but those decisions appear to us to settle it that such a tort, arising as it does out of a maritime 'status' or 'relation', is cognizable by the maritime law whether it arises on sea or on land."

Respondent can imagine no better way to emphasize its point than to remind the Court that Petitioner has mentioned the Extension Act for the first time only in his Petition for Rehearing before the Fifth Circuit Court of Appeals. Further, the respected trial judge, in granting Petitioner's (Defendant's) Motion for Summary Judgment made no mention of the Act in his opinion granting the motion. Further still, none of the cases upon which Petitioner relies in his brief, with the exception of one faint dissent in *Gebhard,* have ever questioned that "jurisdiction" was present and none have seen fit to discuss the Extension of Admiralty Jurisdiction Act. And yet Petitioner complains that

the Fifth Circuit did not consider the Act in upholding the right of Bill Law to the Unseaworthiness remedy.

It is submitted that even in those cases where recovery was denied and upon which Petitioner places reliance, the Courts accepted the principle that jurisdiction was present under the general maritime law but denied recovery under the facts. Thus, in the companion cases of *Drumgold v. Plovda*, 260 F. Supp. 983 (E.D. Va. 1966) and *Hyter v. D. B. Denig Naklihati T.A.S.*, 260 F. Supp. 983 (E.D. Va. 1966) we find the Judge denying recovery because, "We do not, however, find that the loading operation in *Drumgold* had commenced — and we further find that the loading operation in *Hyter* had terminated" Clearly the Court recognized that "jurisdiction" and the cause of action were one and the same and that neither were dependent on Section 740 — the Extension Act. Again, in *Forkin v. Furness Withy & Co.*, 323 F.2d 638 (1963) and *McKnight v. N. M. Patterson & Sons*, 181 F. Supp. 434 (N.D. Ohio 1960) aff'd, 286 F.2d 250 (6 Cir. 1960) cert. denied, 368 U.S. 913, it was held that the plaintiff (McKnight) was "doing ship's service work as an employee of an independent contractor and was entitled to the same protection against unseaworthiness which members of the crew would enjoy ... (however) ... none of the traditional unloading gear of the ship, namely winches, masts or booms were being used in the operation in which he was engaged." In *Forkin* the gear used was held not to be appurtenant to the ship. While we disagree with these holdings, as discussed at length, infra, it cannot be gainsaid that both Courts assumed the existence of Jurisdiction since it

is inextricably bound to the cause of action and that in neither case was it felt that an examination of the Extension Act was necessary.

Respondent feels that whether jurisdiction is premised on the general maritime law or upon the Extension of Admiralty Jurisdiction Act the same result will obtain in this case, because Respondent's injury was caused by an appurtenance of the vessel (Discussed at length, infra), thus being an injury "caused by a vessel" under the Extension Act. Petitioner's argument to the contrary is based solely on the premise that since the forklift machine that respondent was operating did not go aboard the vessel or have actual physical contact with the vessel, the accident cannot be said to have been "caused by" the vessel. In construing the Extension Act, this Court has rejected the notion that the act should be so interpreted and has clearly laid to rest such mechanistic logic. In *Gutierrez* the Court stated:

> "Respondent and the carrier amici curiae would have the statute limited to injuries actually caused by the physical agency of the vessel or a particular part of it — as when the ship rams a bridge or *when its defective winch drops some cargo onto a longshoreman.* Cf. *Strika v. Netherlands Ministry of Traffic,* 185 F.2d 555 (CA 2d Cir.); *Hagans v. Farrell Lines, Inc.,* 237 F.2d 477 (CA 3d Cir.). Nothing in the legislative history supports so restrictive an interpretation of the statutory language." Emphasis supplied;

Yet Petitioner would say that if the equipment is not a "physical agency" of the vessel it cannot be an appurtenance thereof. Of course it is well established that equipment need not belong to the ship to be "appurtenant" and may be so even though it belongs to the stevedore. *Alaska Steamship Company v. Petterson*, 347 U.S. 396, 74 S. Ct. 601 (1954), aff'ing 205 F.2d 478. *Italia Societa v. Oregon Stevedoring Co.*, 376 U.S. 315, 84 S. Ct. 748 (1964). And we would hazard the speculation that this case would not be before this Court at this time if the fork lift machine had been located in the hold of the ship, (and they are there daily in every port) rather than on the dock, since, in that event, no one would have doubted that the fork lift machine was an "appliance" or "appurtenance" of the ship for purposes of the unseaworthiness doctrine or for purposes of jurisdiction.

In stating his argument on this point, Petitioner, has placed much emphasis on *Nacirema Operating Co. v. Johnson*, 396 U.S. 212 90 S. Ct. 347, 25 L. Ed. 2d 371 (1969), and particularly the language of Mr. Justice White concerning the limitations of the Longshoremen's Compensation Act:

> "There is much to be said for the uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the Extension Act to amend the Longshoremen's Act would not affect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act." 396 U.S. at 223.

The Plaintiff in *Nacirema* was arguing that uniformity in compensation cases would be achieved by applying the Longshoremen's Act to dockside injuries. Mr. Justice White, in the quoted passage, obviously and rightly pointed out that to tie the Compensation Act to the Extension Act would not achieve consistency since the right to compensation would then depend on the injury being "caused by a vessel." This, of course, would create even more inconsistency in that a longshoreman who was injured on the dock by an appurtenance of the vessel would be compensated under the Federal Act; while his fellow longshoreman, also injured on the dock, but not by an appurtenance of the vessel, would have to look to the State Act. The injection of this element of causation is repugnant to the very nature of workmen's compensation, and would create a controversy in the law of workmen's compensation similar to that which existed in the pre-Calbeck[1] era with its uncertain Seas of the "twi-light zone" and "maritime but local" theories.

Thus the holding of this Court in *Nacirema* is simply that the Longshoremen's and Harbor Workers' Compensation Act does not extend coverage to injuries occurring on the dock and that the Compensation Act was not amended by the Extension of Admiralty Jurisdiction Act; that this conclusion is compelled by the language of the Compensation Act and the legislative history of the Acts.

"The single question of statutory construction

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[1]Calbeck v. Travellers Ins. Co., 370 U.S. 114, 82 S. Ct. 1196 (1962)

presented by these cases is whether injuries to longshoremen occurring on piers permanently affixed to shore are compensable under the Longshoremen's and Harbor Workers' Compensation Act of 1927 (Longshoremen's Act) 44 Stat. 1424 33 U.S.C. Sec. 901-950." 396 U.S. at 213.

"The clear implication is that in enacting its own compensation statute, Congress was trying to do what it had failed to do in earlier attempts: to extend a compensation remedy to workmen injured beyond the pier and hence beyond the jurisdiction of the States. This purpose was clearly expressed in the language limiting coverage to injuries occurring 'upon the navigable waters,' and permitting recovery only 'if recovery .... through workmen's compensation proceedings may not validly be provided by State law.' This conclusion is fully supported by the legislative history." 396 U.S. at 216-217 (Footnotes omitted.)

"While the Extension Act may leave the effect of permitting respondents to maintain an otherwise unavailable libel in admiralty, see Gutierrez v. Waterman S.S. Corp., 373 U.S. 206, 10 LEd 2d 297, 83 S. Ct. 1185 (1963), the Act has no bearing whatsoever on their right to a compensation remedy under the Longshoremen's Act." 396 U.S. at 222-223 (Footnotes omitted.)

Therefore, in *Nacirema* this Court clearly recognized

that the limitation placed by Congress on the scope of compensation coverage under the Longshoremen's and Harbor Workers' Compensation Act is much narrower than the Jurisdiction of the Court over an Admiralty cause of action for injuries caused by an unseaworthy condition of a vessel or its appurtenances. It is difficult to see how the language and holding in *Nacirema* can be so misunderstood as to be taken as limiting this Court's statements in *Gutierrez* concerning jurisdiction over suits for injuries caused by an unseaworthy appurtenance of a vessel.[2] Even though *Nacirema* specifically approves *Gutierrez,* Petitioner asks the Court to re-draw the jurisdictional line at the waters edge in his argument that Admiralty Jurisdiction extends only to injuries caused by a "physical agency of the vessel."

The cases since *Gutierrez* have consistently recognized that Admiralty Jurisdiction extends to injuries caused by an appurtenance of the vessel, and that the only rational test of whether a piece of equipment is an appurtenance of the vessel is not whether the machine is on the dock or on the ship, but in what type of work it was engaged. *Deffes v. Federal Barge Lines Inc.*, 361 F.2d 422 (5 Cir. 1962); *Huff v. Matson Navigation Co.*, 338 F.2d 205 (9 Cir. 1964); *Spann v. Lauritzen,* 344 F.2d 204 (3 Cir. 1965); *Gebhard v. S.S. Hawaiian Legislator,* 425 F.2d 1303 (9 Cir. 1970); *Olvera v. Michalos,* 307 F. Supp. 9 (S.D. Tex. 1968); *Chagois v. Lykes*

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[2]Although such a misinterpretation was recently made by the District Court of Maryland in *Green v. Pope & Talbott,* (D.C. Md. Adm., No. 4809, April 6, 1971) (Several cases consolidated for decision)

Bros. S.S. Company, 432 F.2d 388 (1970). Not whether the machine is in physical contact with the vessel but, as with the *Sieracki* seaman, whether the machine "is performing ... a ... function essential to maritime service. . ."[3], and thus ". . . in the service of the vessel . . ."[4]. If so, then clearly an accident caused thereby is "caused by a ship" within the meaning of the Extension Act.[5]

Respondent, Injured On The Pier Alongside A Vessel While Transporting Cargo To The Vessel Was Loading The Vessel And Thus Performing Work In The Service Of The Vessel And Was Entitled To The Warranty Of Seaworthiness.

A. *General Discussion:*

Counsel for Respondent will not belabor the Court with lengthy and needless historical comment on the development of the seaworthiness doctrine and will mention that background only for brief orientation.

The starting point for all controversies involving application of the doctrine as it pertains to shore-based

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[3]Seas Shipping Company v. Sieracki, 328 U.S. 85, 66 S. Ct. 872 (1946)

[4]*Alaska S.S. Co. v. Petterson*, 347 U.S. 396, 74 S.Ct. 601 (1954).

[5]See also *Adams v. Harris County Texas*, 316 F. Supp. 938 (S.D. Tex. 1970) where the Extension Act is discussed and cases are collected. The Court there stated, at page 941, "In any given case, whether or not a person's injuries are 'caused' by a ship on navigable waters within the meaning of Section 740 depends in turn on the proximity of that person's relationship with the vessel." Jurisdiction was upheld when a drawbridge operator, in anticipation of an approaching vessel, lowered a barrier on a bridge which the plaintiff struck.

workers is *Seas Shipping Company v. Sieracki*, 328 U.S. 85, 66 S. Ct. 872 (1946), wherein this Court applied the maritime warranty of seaworthiness, originally recognized in *The Osceola*, 189 U.S. 158, 23 S. Ct. 483 (1903), in favor of shore-based workers engaged aboard a vessel in work customarily or traditionally performed by seamen. In *Sieracki*, the Court evinced a willingness to recognize substance over form, and those "incurring a seaman's hazards" were accorded a seaman's protection, *Sieracki*, supra, despite " ..." 'the fortuitous circumstances' of their employment by one other than the owner to do the ship's work," or "more modern divisions of labor." Id. at 98, 96. Eight years later this Court in *Alaska Steamship Co. v. Petterson*, 347 U.S. 396, 74 S. Ct. 601 (1954), aff'ing 205 F.2d 478 (9 Cir. 1953), further protected these workers by holding that the vessel owner's absolute duty to provide seaworthy gear, equipment and appliances is the same when applied to the gear, equipment and appliances of the stevedoring contractor, and therefore cannot be nullified by delegating the loading or unloading operation or by assigning a portion of the operation to such an independent contractor. *Petterson* has been followed without variance since its affirmance. See *Rogers v. United States*, 347 U.S. 984, 74 S. Ct. 849 (1954), reversing, per curiam, 205 F.2d 57 (3 Cir. 1953); *Italia Societa v. Oregon Stevedoring Co.*, 376 U.S. 315, 84 S. Ct. 748 (1964); *Litwinowicz v. Weyerhauser S.S. Co.*, 179 F. Supp. 812 (E.D. Pa. 1959).

Finally, in *Gutierrez v. Waterman Steamship Company*, 373 U.S. 206, 83 S. Ct. 1185 (1963) the Court, agreeing with the "ineluctable logic" of the cases, held sea-

worthiness includes fitness for loading and unloading and that the duty to provide a seaworthy ship and gear applies to longshoremen unloading the ships whether they are standing aboard the ships or on the pier. The important factor is the *status* of the injured party or his *relationship* to the vessel which entitles him to the maritime tort protections, since the work of loading and discharging a vessel is historically the work of the ship.

As this Court indicated in *Sieracki*, the warranty is imposed by reasons of the hazards attendant to the working of vessels. The liability of the vessel or its owner cannot be nullified by parceling out a portion of the shipping operation to independent contractors who perform the seaman's work of loading and unloading. It follows that with advanced technology which makes the loading and unloading operations faster and more profitable, the vessel owner cannot be relieved of liability because the equipment involved is not that used by members of the Hansiatic League. In *Sieracki*, the Court stated: "(t)hat the owner seeks to have it (loading and unloading) done with the advantages of more modern division of labor does not minimize the worker's hazards and should not nullify his protection." Id. at 96. Although the fork lift machine which Respondent was operating at the time of the accident in this case was, like the instrumentalities associated with many of the cases cited in this brief, not devices which were found on the ships of the Hanse Towns of Medival Europe the statement from *Sieracki* of "more modern divisions of labor is equally applicable to 'more modern labor saying devises." Further,

simply because the loading operation can be performed faster and more profitable by placing some in the hold of the ship and some on the dock to expedite the process does not minimize the workers hazards nor can it nullify his protection. Clearly the operation of the fork lift machines on the dock is a necessary adjunct to the stevedoring operation.

B. *THE RESPONDENT WAS IN THE SERVICE OF THE SHIP*

It is submitted that the warranty of seaworthiness extends to Respondent if he was engaged "in the service of the ship" at the time of his accident.[6] *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 66 S.Ct. 872 (1946) has settled it that "Historically the work of loading and unloading is the work of the ship's service, performed until recent times by members of the crew." *Sieracki*, at U.S. 96. Under the facts, this in turn, depends upon

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[6] *Chargois v. Lykes Bros. Steamship Company*, 432 F.2d 388 (5 Cir. 1970)
Deffes v. Federal Barge Lines, Inc., 361 F.2d. 422 (5 Cir. 1966)
Spann v. Lauritzen, 344 F.2d 204 (3 Cir 1965)
Hagans v. Ellerman & Bucknall, S.S. Co., 318 F.2d 563 (3 Cir. 1963)
Gebhard v. S.S. Hawaiian Legislator, 425 F.2d 1303 (9 Cir. 1970)
Thompson v. Calmar S.S. Corp., 331 F.2d 657 (3 Cir. 1964)
Litwinowicz v. Weyerhaeuser S.S. Co., 179 F. Supp. 812 (E.D. Pa. 1959)
McDonald v. United States, 321 F.2d 437 (3 Cir. 1963)
Byrd v. American Export Isbrandsten Lines, Inc., 300 F. Supp. 1207 (E.D. Pa. 1969)
Olvera v. Michalos, 307 F. Supp. 9 (S.D. Tex. 1968)
For contrary holding see *Drumgold v. Plovda* (E.D. Va. 1966) 260 F. Supp. 983 (Companion case to *Hyter v. Deniz-Naklikati TAS.*) and *Danial v. Skibs A/S Hilda Knudsen*, 368 F.2d 178 (3 Cir 1966).

whether Bill Law was "loading" the ship. Respondent feels that the reasoning of the Circuit Court below is to be particularly applauded for its clarity and would only emphasize certain portions of the Fifth Circuit's opinion.

> "We choose to align ourselves with the cases which define 'loading' and 'unloading' in a realistic sense rather than as hypertechnical terms of art. It seems to us that plaintiff Law was clearly engaged in 'loading' the SAGAMORE HILL under any conventional interpretation of that term. He was part of a group of longshoremen who were engaged in the total operation were on board the vessel, while others were on the dock. The efforts of both the ship-side workers and the shore-side workers were necessary to load the ship. We think it would be incongruous and capricious to deny the protection of the warranty of seaworthiness to Plaintiff Law while granting it to his fellow longshoremen whose duties happened to involve activities on the vessel or the actual physical act of lifting the cargo onto the ship."

> "We do not have here an accident occurring in some urban enclave or pastoral pasture far removed from the pier. On the contrary, Law's activities had proximity to and continuity with the job at hand — the task of loading cargo aboard the SAGAMORE HILL. His specific job performance was so integrally woven into the entire loading operation that the two cannot

> be separated except by the erection of hyper-technical and unrealistic legal barriers. If the terms 'loading' and 'unloading' are to be terms associated with reality rather than mere conceptual microcosms without adjuncts beyond the ship's beam, we have no choice but to conclude the plaintiff Law was engaged in loading the SAGAMORE HILL. We therefore hold that on the facts of this case — a longshoreman, intimately involved in the process of loading a vessel, injured as he moved cargo from the back to the front of the dock — plaintiff was within the scope of the warranty of unseaworthiness."

The cargo of a vessel must be handled on the dock in order to go aboard the ship. It is a continuous process and one which does not merely begin when the cargo is lifted aboard the ship. The operation of the fork lift machine by Respondent was a material, direct and integral part of the loading process, just as much connected with the loading and discharging as a winch or crane. Petitioner, as did the District Judge below, has raised various far fetched hypotheticals. In the same vein are the hypotheticals posed by the Court which decided *Drumgold v. Plovda* and *Hyter v. D.B. Denig Naklihati*, 260 F. Supp. 983 (E.D. Va. 1966) where that Court rebelled at considering the seaworthiness warranty to protect an imaginary longshoreman who took the stevedore's truck to town to obtain rope for the loading operation and while miles from the dock was involved in an accident. Neither the District Court in the present case nor the District Court in *Drum-*

gold and *Plovda* considered the "remoteness" test suggested by this Court in Gutierrez, which, if they had, no doubt would have laid their fears to rest.

Here, Respondent was neither too far removed in time nor place. Does not the cargo haye to be brought to a vessel before it is taken aboard? Is it reasonable to believe that "loading" does not take place until the moment the cargo hooks touch the cargo? Should it make any difference or be of any consequençe if the cargo hooks had come to rest on Respondent' fork lift or on the cargo as it lay on the machine's "fork" or in physical contact and then the headache rack fell on him? It clearly should not. Nor should it be of any consequence that the accident and the resulting injury occurred at some point between the vessel and the cargo pile some fifty feet away.

While the Fifth Circuit Court of Appeals was writing its opinion in the instant case another panel of that Court independently reached the same conclusions based on similar facts. There a longshoreman was in a railroad car at the dock alongside ship operating a "screw auger". The auger fed bulk rice from the car into the hopper of a marine leg or grain elevator. Another device, in the elevator, then took over and fed the rice ultimately into the hold of the ship. Plaintiff was hurt by the defective auger he was operating and the Court awarded judgment against the ship on the basis of unseaworthiness. On appeal the Fifth Circuit affirmed, stating:

"Chagois was injured while he was holding

> down the auger; his work — as much as that of the longshoremen stationed on the ship — was an essential part of an unbroken sequence of moving the rice from the pier to the ship."

In *Spann v. Lauritzen,* 344 F.2d 204 (3 Cir. 1965) the plaintiff longshoreman was working in a gang discharging bulk nitrate of soda from the hold of a ship. To do this a shorebased crane would reach into the ships hold for a bucket load of nitrate, pick it up and dump the nitrate into a large shorebased hopper. Plaintiff operated the "floor" of the hopper which opened to fill trucks, as they drove underneath to receive the cargo. He was injured when a bucket load of nitrate was dropped into the hopper causing a premature downward movement of the handle used to manipulate the floor. It was contended that the plaintiff was engaged in loading the trucks and not in unloading the ship. The Third Circuit would not allow such an artificial distinction stating:

> "He is no less so (within the protection of the maritime jurisdiction) because modern ingenuity suggested the desirability of combining the unloading of the vessel with the loading of the trucks. It has frequently been said that the doctrine of unseaworthiness is not to be rigidly construed so as to exclude from its scope modern machinery to do the work traditionally done in loading or unloading vessels. *Huff v. Matson Navigation Company,* 338 F.2d 205 (9 Cir 1964); *Rodriguez v. Coastal Ships Corporation,* 210 F. Supp. 38 (S.D. N.Y. 1962). The la-

> bor saving method here used which facilitiated the removal of the cargo by motor vehicles may not be held to eliminate the unloading of the cargo from the area of traditional work of the seamen in the service of the vessel." *Spann,* Supra.

In *Pope & Talbot Inc., v. Cordray,* 258 F.2d 214 (9 Cir. 1958), the Ninth Circuit Court of Appeals considered the rights of a longshoreman whose duties involved supervision of the unloading operation from the point where the cargo was at ship-side to its place of rest on the pier. That Court stated:

> "We hold that the duty of providing a seaworthy ship and gear at the time of this accident extended to the appellee, whether or not the appellee was on board the ship or on the dock. The test is, what was the nature of his work? He was performing a service for the ship in the discharge of his cargo. His employer was under contract with the shipowner to take the cargo from the shipside and to put it in a place of storage, and appellee was engaged in the performance of this work. The appellee's work was the work of a longshoreman and he was entitled to seaworthy gear while he was performing his services."

In *Gebhard v. S.S. Hawaiian Legislator,* 425 F.2d 1303 (9 Cir. 1970) the injured longshoreman was a marine clerk whose duty station was at ship-side near a pier based crane. "His duty in the loading operation was to position, in proper sequence, the straddle carriers

under the crane. The containers left by the straddle carriers were then lifted directly on to the ship by crane." The argument was that his duties did not *directly* involve him in the loading operation but were only *preparation* for loading.

> "That narrow view is not supported by the authorities: A petitoner need be only an integral part of the loading process, and *Gebhard* was certainly that" Id. at 1311

It is submitted that the Ninth Court of Appeals decision in *Gebhard* also effectively disposes of that Court's prior decision in *Partenweederi, M/S Belgrano v. Weigel,* 299 F.2d 897 (9 Cir. 1962). In any event, the *Belgrano* case was decided purely on the procedural ground that Plaintiff had failed to meet his burden of proof. "Our *holding* is simply that the libelant failed to meet his burden of proving that the nature of the work performed by him was the 'type of work' traditionally performed by seamen." *Belgrano,* at 902 Emphasis supplied.

In speaking to this question under similar facts the Third Circuit Court of Appeals has stated: "That the work inextricably associated with the loading of the vessel, is as a matter of law, the work of the ship's service, was clearly established in *Hagans* (supra) (*Hagans v Ellerman & Bucknall S.S. Company,* 318 F.2d 563 (1963)) and recently confirmed in *Gutierrez.*" *Thompson v. Calmar S.S. Co.,* 331 F.2d 657 (1964).

While the facts in the Gutierrez opinion do not reveal

at what point in the unloading operation the plaintiff functioned nor does it appear from the First Circuit's opinion (301 F.2d 415 (1962)) Respondent has no doubt that the same result would have been reached if he had been at the same place performing the same function as Bill Law. It would serve no purpose to extend this discussion. Unquestionably the authorities support the Respondent Bill Law. While it is no doubt true that technology allows a more profitable division of labor which expedites the loading operation, it is absolutely incongruous to demand actual physical association with the vessel in order to be entitled to the doctrine of seaworthiness. Such a requirement is so restrictive and uncompromisingly literal that, if relied upon, it would do violence to the humanitarian policy which underlies the warranty which has so often been reaffirmed by this Court. It is submitted that Respondent's intimate and integral involvement in the loading operation was as directly connected with the ship's service as the work being performed on the ship itself. And while it is true, as the District Court held here, that "there must be a beginning for the loading operation", Respondent's work was a part of the continuous operation of loading the SAGAMORE HILL which *had* begun. Loading and unloading do not just start and stop at the "hook-up" point when cargo is being taken aboard or is being taken from a ship, and likewise do not just come to a halt upon or commence from that same point on the dock. No one would deny that cargo is being unloaded as it is moved from its place of stowage in the "wings" of the ship to the cargo hook. The cargo is being handled by the longshoremen all the time. There is no difference in the nature

of their service to the ship but only in the position in which they are at the time of the injury.

C. *EQUIPMENT IN THE SERVICE OF THE SHIP*

Respondent submits that it is a patent absurdity to, on the one hand, concede that the *Gutierrez* longshoreman, working exclusively on the dock is entitled to the doctrine of seaworthiness, and on the other hand, deny that the equipment with which he works need meet the requirements of the warranty. Such logic, if implemented, would be an open invitation for the stevedoring concern to place his new, defect free fork lift machines on the ship to handle cargo and when they become worn out and hazardous place them on the dock. Good economy yes, but hardly an acceptable standard of safety. We cannot believe this is the law for it clearly circumvents the logic of Gutierrez, and the reasoning behind Italia Societa per Azioni di Navipozione v. Oregon Stevedoring Company 376 U.S. 315, 84 S. Ct. 748 (1964) and other cases which uphold third party liability on the sound principal that it is a powerful incentive to improve loading and unloading equipment.

Petitioner brings to the Courts attention Forkin V. Furness Withy, 323 F.2d 638 (2 Cir. 1963) and McKnight V. N.M. Patterson & Sons, 286 F.2d 250 (6 Cir. 1960). No other Circuit Courts have followed the reasoning in those cases and they have received appropriate

treatment.[7] In Huff V Matson Navigation Company, 338 F.2d 205 (9 Cir. 1964) the Court said:

> "Our attention has also been called to the case of Forkin V. Furners Withy & Co. . . (reviewing the facts) . . . The Court held that the shipowner's obligation did not extend to the equipment involved, seemingly because the conveyer had not come in contact with the ship. It continued, 'It may well be that once the conveyor was affixed to the ship, a seaman or a stevedore engaged in unloading or loading, would have been entitled to recover on the ground of unseaworthiness if injured as a result of the conveyor's not being reasonable fit for its intended use, . . . but in such a case the conveyor would have become 'appurtenant' in the significant sense that it would have been within the shipowner's power of inspection whereas here it had not yet reached that status".
>
> "We note from the portion of that opinion quoted above that what is there said would constitute a basis for distinguishing the Forkin case from this one. For here the scraper device had been affixed to the ship and was operating in the hold and it would have been with-

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[7]For Federal District Courts in accord with the cited cases see: *Sherbin v. S. G. Embiricos* 200 F. Supp 874 (E.D. La. 1962). (*Sherbin*, being from a lower court within the Fifth Circuit is, of course, overruled by implication by *Bill Law.) Henry v. S.S. Mount Evan*, (D.C.T. Md. 1964) 227 F. Supp. 408.

> in the shipowner's power of inspection. *We do not care to perpetuate any such distinction. We base our refusal to treat the Forkin case as an authority upon the broader ground that the basic theory there applied is manifestly wrong and contrary to the controlling decisions,* as noted in the dissenting opinion in that case.[8] Emphasis added.

> "The suggested concept of liability being predicated upon the shipowner's power of inspection has been rejected repeatedly. In Mitchell v. Trawler Racer, Inc., 362 U.S. 539, 80 S. Ct. 926, 933, 4 L.Ed. 2d 941, the Court stated: '(T)he shipowner's actual or constructive knowledge of the unseaworthy condition is not essential to his liability.' (Citing Grillea V United States, 232 F.2d 919, and others)"

Further in the same opinion that Court expressed its views as to both those cases: "We reject what we regard as the ill advised attempts as exemplified in the McKnight and the Forkin cases to attach unwarranted exceptions to the rules heretofore applied by the Supreme Court in this field."

Respondent is not contending that the doctrine of seaworthiness allows recovery regardless of the agency causing the harm. We do urge upon this Court that where a longshoreman is performing work which is in the service of the ship and using equipment which

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[8] See also Deffes v. Federal Barge Lines, Inc., 361 F.2d 422 (1966) for a similar statement concerning these cases.

is likewise, and necessarily so, "in the service of the ship", then the warranty protects him while in that pursuit. We do not feel that nice distinctions can be drawn because of the size of the equipment or that rational decisions can be made on the basis of the equipments physical contact with the vessel. *Spann V. Lauritzen*, 344 F.2d 204 (3 Cir. 1965). The fork lift machine Bill Law was operating, just as Bill Law himself, was an essential, integral part of the loading operation. In *Olvera V. Michalos*, 307 F. Supp. 9 (S.D. Tex. 1968) the Plaintiff was helping to load corn from railroad cars to the ship. He was on the dock and using a "power shovel" also located on the dock when the defective shovel amputated his leg. No one would suppose that such an instrument would have been found on sailing ships. The District Court in denying the defendants motion for summary judgment recognized that if such a device is an essential part of the loading operation, the warranty applies.

Petitioner is concerned that the Court below has not expressly overruled its own case of *Kent V. Shell Oil Co.*, 286 F.2d 746 (5 Cir. 1961). Respondent would emphasize that there is no need to expressly overrule what is merely dictum. *Kent* was decided on a question of State Law and should not be treated as an authority. After deciding the case on this basis the Court added the dictum relied upon by Petitioner. *Kent* of course was decided prior to *Gutierrez*. It is significant to note that the Circuit Court of Appeals in deciding *Guiterrez* cited and quoted language from the *Kent* case concerning the 'awesome' responsibilities of unseaworthi-

ness (301 F.2d 415, at 417) and further that this Court in reviewing and reversing the Appellate Courts decision in *Gutierrez* quoted that same language from *Kent*. *Gutierrez*, 373 U.S. at 208). Clearly, this Court was aware of the *Kent* decision and by its holding in *Gutierrez* made an express reversal of *Kent* a mere formality. In any event the decision in the instant case made it clear that the Fifth Circuit no longer considers *Kent* as valid authority. See also *Chagois V. Lykes Bros. S.S. Company*, 432 F.2d 388 (5 Cir. 1970). Even so, the facts in *Kent* show that the Plaintiff was a truck driver who was delivering pipe to a barge. It was found that he had only an incidental connection with the stevedoring process. Respondent does not quarrel with that conclusion. Bill Law is simply not in the position of that truck driver. Prior to his injury and at the time of his injury he was using the ship's gear, supplied by the stevedoring contractor and was performing work for the ship with that gear.

Respondent thinks it clear that the situation in Bill Law was not unanticipated by this Court when *Gutierrez* was decided. For, as Mr. Justice Harlan said in his dissent in that case:

> "Whether from the standpoint of negligence or unseaworthiness I see no basis for the holding in this case. Presumably the result reached by the Court would be the same — at least consistency demands that it should be the same — if this accident had occurred on the dock while the beams were being *loaded* rather than unloaded." 373 U.S. 206.

Petitioner also makes much over the "lack of control" which a shipowner has over the stevedore's equipment. One need look no further than *Gutierrez* itself to recall that this can no longer be heard as valid argument. If further pronouncements from this Court are necessary for support of this well established principle, Respondent would point to *Seas Shipping Company V. Sieracki,* 328 U.S. 85, 66 S.Ct. 872 (1946), *Mitchell V. Trawler Racer,* 362 U.S. 539, 80 S. Ct. 926 (1960) and *Alaska Steamship Co. Inc., V. Petterson,* 347 U.S. 396, 74 S. Ct. 601 (1954).

In Considine V. Black Diamond Steamship Corporation, 163 F. Supp. 107 (D.C. Mass. 1958), the Court was asked to hold a vessel to be unseaworthy because of a defective loading truck brought aboard by the stevedore. The Defendant argued that this was not the type of equipment found on ships. The Court, relying on *Petterson,* was impelled to the conclusion that the warranty *did* apply.

In his great work on maritime prseonal injuries Martin J. Norris says:

> "It is the use to which the equipment is put, i.e., its use in connection with the ships cargo, that should be the determining factor, not whether the type is 'traditional' ship's equipment. Equipment normally used by some ships may never be used by others and technological advances may introduce equipment unheard of before, much less used." Norris, *The Law of Maritime Personal Injuries,* 2d ED., Sec. 34 (1966).

Respondent thinks this principal is clearly applicable in this instance. It is obvious that if Bill Law was loading the Sagamore Hill, and he most surely was, then the fork lift machine he was operating was a vital and necessary tool, in the service of that function without which the stevedoring operation itself could not be accomplished. It cannot be of consequence that he was operating a motorized piece of equipment. Methods, instruments and implements of loading and unloading a vessel change just as, over the ages, the nature of the cargo changes. It takes little imagination to envision "swabies" or "gobs" or "tars" on the pier rolling barrels of water and wine or pushing crates of silk and spices from a storage area near the ship to a designated place alongside her to be taken aboard. If loading a vessel was the work of seamen during those bygone days, then it is still so as to the *Sieracki* — seaman today. And, just as labor saving devices such as little wheeled carts must have been used in those days, the fact that technology has developed a tool such as a fork lift machine clearly cannot be of significance. Neither can it be an important factor that modern industrial efficiency experts have found that the loading process can be accomplished faster by placing two machines on the dock and two in the hold. If it had been possible for Bill Law to drive his machine across a gangway with his cargo and place it immediately in its final place of "stow", all in one operation, would he or his machine have been any more directly involved in the loading of the vessel? Respondent thinks not. And if the accident had chosen the fortuitous moment that his front wheel first touched the gangway

there would have been no dispute that the warranty protected him and applied to his machine also.

CONCLUSION

The Fifth Circuit Court of Appeals correctly held that the Respondent, a longshoreman working alongside a ship directly and intimately involved in the loading process and using equipment a necessary and integral part of that operation is entitled to the warranty of seaworthiness. Accordingly, the Fifth Circuit's judgment should be affirmed.

Respectfully submitted

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PROOF OF SERVICE

I, Ross Diamond Jr., one of the attorneys for the Respondent herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the ____ day of May, 1971, I served three copies of the foregoing brief of Respondent on Victory Carriers Inc., and Gulf Stevedore Corp., by mailing to same in duly addressed envelopes with first class postage prepaid to Hon. George Wood, 510 Van Antwerp Building, Mobile, Alabama 36601, and to Hon. W. Boyd Reeves, 1101 Merchants National Bank Building, Mobile, Alabama 36602, Attorneys for Petitioners.

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SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1971

NO. 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL and GULF STEVEDORE CORP., *Petitioners*

v.

BILL LAW, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE AS AMICUS CURIAE

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IN THE

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v.

BILL LAW, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE AS AMICUS CURIAE

To The Honorable Judges Of Said Court:

CONSENT OF PARTIES

All of the parties in this case have given their written consent to the filing of this Brief Amicus Curiae and such written consent has been filed with the Clerk.

STATEMENT OF INTEREST

The National Maritime Compensation Committee is a nationwide organization whose membership is composed of representatives of the following seventeen maritime associations from substantially all of the martime centers in the United States:

Boston Shipping Association, Inc.
Great Lakes Terminal Association
Hampton Roads Maritime Association, Inc.
Lake Carriers Association
Master Contracting Stevedores Association of the Pacific Coast, Inc.
Mobile Steamship Association, Inc.
National Association of Stevedores
New Orleans Steamship Association
New York Shipping Association, Inc.
North Atlantic Ports Association
Pensacola Steamship Association
Philadelphia Marine Trade Association
Portland Shipping Association, Inc.
Savannah Maritime Association
Steamship Trade Association of Baltimore, Inc.
Tampa Steamship Association
West Gulf Maritime Association

In turn the membership of these maritime associations include substantially all of the different types of employers who furnish shore based employees and shore based equipment to perform various services for shipowners while their vessels are in port.

The National Maritime Compensation Committee was formed by these employer groups as a means of making known, primarily to the Congress, the views of substantially all segments of the maritime industry in connection with legislation relating to the compensation of their em-

ployees who are injured in the course of their employment.[1]

The National Maritime Compensation Committee is a particularly appropriate organization to file this Amicus Curiae Brief in order to acquaint this Court with the views of the employers in substantially all segments of the maritime industry as a whole.[2]

QUESTION PRESENTED

This case presents a question of first impression in this Court:

> Does the shipowner's warranty of the seaworthiness of its vessel to an injured longshoreman extend to the stevedore's shore based equipment being used ashore which is not usually and customarily furnished by the ship and which has not been incorporated into or been substituted for the ship's seagoing cargo gear at the time of the accident?

In the present case, Longshoreman Law was injured because of a defect in the stevedore's shore based forklift truck which was being used to move cargo from the dockside warehouse onto the dock apron from whence it would

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1. The National Maritime Compensation Committee is registered pursuant to the Federal Regulation of Lobbying Act.

2. In one other case involving an equally important issue to the maritime industry as a whole, the National Maritime Compensation Committee filed a Brief Amicus Curiae to acquaint the Court with the views of its members with respect to the problems involved. See *Nacirema Operating Co. v. Johnson,* 396 U.S. 212, 24 L.Ed.2d 371, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895, in which this Court held that longshoremen injured on the dock as an extension of the land were not entitled to recover under the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C.A., §901 ff, but, just like every other shorebased worker, only under the state workmen's compensation act.

be loaded aboard the vessel. The Court below held that the defendant shipowner's warranty of the seaworthiness of its vessel extended to a contract stevedore's forklift truck while it was thus being used on the land.

Only two weeks later the Court below extended the shipowner's seaworthiness warranty even further ashore in the *Chagois* case.[3] Longshoreman Chagois was injured by a defective screw auger being used to unload rice from a railroad car into the hopper of a grain elevator conveyor which then carried the rice to the ship's hold. The Court below held that the shipowner's warranty of the seaworthiness of its vessel extended to the stevedore's screw auger being used to unload the railroad car.

In these two decisions the Court of Appeals below has extended the shipowner's warranty of the seaworthiness of its vessel to shore-based equipment being used entirely ashore, which it neither owned, operated nor controlled, and which might be utilized for the movement of cargo on the dock or in the warehouse (*Law*) or in a grain elevator conveyor or even in a railroad car (*Chagois*).

This Court declined to so unrealistically extend a shipowner's warranty of the seaworthiness of its vessel in another case to shore side equipment and materials being used aboard a vessel, because in the words of Justice Stewart, it

> ". . . would distort the law of Mahnich, of Hawn and of Sieracki beyond recognition."[4]

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3. *Chagois v. Lykes Bros. Steamship Co., Inc.*, 5 Cir. 1970, 432 F.2d 388, petition for writ of certiorari pending as No. 70-64, October Term, 1971, *Lykes Bros. Steamship Co., Inc., Petitioner v. Joseph Chagois, Respondent.*

4. *United New York and New Jersey Sandy Hook Pilots Association v. Halecki*, 358 U.S. 613, 3 L.Ed.2d 541, 79 S.Ct. 517 (1959).

These two recent decisions of the Court of Appeals below, however, have produced precisely such a distortion, not only of *Mahnich*,[5] of *Hawn*[6] and of *Sieracki*,[7] but of this Court's later decision in *Gutierrez*[8] as well. It is therefore respectfully submitted that this case should be reversed and this distortion of the law corrected.

ARGUMENT

COURT BELOW DID NOT COMPREHEND REASONS ON WHICH LAW OF *MAHNICH, HAWN, SIERACKI* AND *GUTIERREZ* IS BASED

The decisions of the Court of Appeals below result from its apparent failure to comprehend fully the basis on which this Court has extended a shipowner's warranty of the seaworthiness of its vessel to certain shore based workers who perform services for the vessel while it is in port.

The shipowner's absolute and non-deligible duty to furnish a seaworthy vessel to the "men who go down to the sea in ships" was extended to longshoremen injured while working aboard a ship in navigable waters in *Sieracki* as this Court stated, because

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5. *Mahnich v. Southern Steamship Company*, 321 U.S. 96, 88 L.Ed. 561, 64 S.Ct. 455 (1944).

6. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 98 L.Ed. 143, 74 S.Ct. 202 (1953).

7. *Seas Shipping Company, Inc. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099, 66 S.Ct. 872 (1946).

8. *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 10 L.Ed.2d 297, 83 S.Ct. 1185, reh. den. 374 U.S. 858, 10 L.Ed.2d 1082, 83 S.Ct. 1863 (1963).

> ". . . For these purposes he is, in short, a seaman because he is doing a seaman's work *and incurring a seaman's hazards.*" (Emphasis supplied)[9]

Yet in extending the shipowner's warranty to the stevedore's shore based forklift truck in this case, the Court below did so solely because it concluded Longshoreman Law was "doing a seaman's work." In so doing, it completely disregarded the most important factor—he was not "incurring a seaman's hazards". *Sieracki* makes it perfectly clear that the shore based worker must not only be doing a seaman's work but must be incurring a seaman's hazards as well.[10]

In *Hawn* this Court reaffirmed this underlying criteria:

> ". . . His (carpenter working aboard the ship) need for protection from unseaworthiness was neither more nor less than that of the stevedores then working with him on the ship or of seamen who had been or were about to go on a voyage. *All were subjected to the same danger. All were entitled to like treatment under law.*" (Emphasis and parenthetical expression supplied)[11]

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9. *Seas Shipping Company, Inc. v. Sieracki,* 328 U.S. 85, at page 99, 90 L.Ed. 1099, at page 1109, 66 S.Ct. 872 (1946). Thus was born what is now commonly called a "Sieracki seaman."

10. For example, a shipowner has a shorebased employee who works in a dockside warehouse splicing various ropes and cables to be used as mooring lines aboard its vessels. While he is clearly doing a seaman's work he is just as clearly not incurring a seaman's hazards. If he were injured while bringing a new coil of rope to his work room on a forklift truck because the forklift was defective, he would not be entitled to impose liability on the shipowner based on the doctrine of unseaworthiness since he was not incurring a seaman's hazards. Numerous other examples could also be given of shorebased employees who do seaman's work, but do not incur seaman's hazards.

11. *Pope & Talbot, Inc. v. Hawn,* 346 U.S. 406, at page 413, 98 L.Ed. 143, at page 153, 74 S.Ct. 202 (1953).

Indeed the only justification for the doctrine of unseaworthiness (with its rigid and inflexible absolute liability without fault standard) is based entirely on the "hazards" or "dangers" encountered by "non-Sieracki seamen". This Court so stated this to be the justification in *Mahnich*:

> ". . . *We have often had occasion to emphasize the conditions of the seamen's employment,* see Socony-Vacuum Oil Co. v. Smith, supra (305 U.S. 430, 431, 83 L.Ed. 269, 270, 59 S.Ct. 262) and cases cited, *which have been deemed to make him a ward of the admiralty and to place large responsibility for his safety on the owner.* He is subject to the rigorous discipline of the sea, and *all the conditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers.*" (Emphasis supplied)[12]

Nor does this Court's decision in *Gutierrez* alter to any extent these two *Sieracki* criteria. Gutierrez expressly rec-

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12. *Mahnich v. Southern Steamship Company,* 321 U.S. 96, at page 103, 88 L.Ed. 561, at page 567, 64 S.Ct. 455 (1944). In the *Smith* case cited in the above quotation from *Mahnich,* this Court stated this justification in somewhat greater detail as follows:

> "The seaman, while on his vessel, is subject to the rigorous discipline of the sea and has little opportunity to appeal to the protection from abuse of power which the law makes readily available to the landsman. His complaints to superior officers of unsafe working conditions not infrequently provoke harsh treatment. He cannot leave the vessel while at sea. Abandonment of it in port before his discharge, to avoid unnecessary dangers of employment, exposes him to the risk of loss of pay and to the penalties for desertion. In the performance of duty he is often under the necessity of making quick decisions with little opportunity or capacity to appraise the relative safety of alternative courses of action. Withal, seamen are the wards of the admiralty, whose traditional policy it has been to avoid, within reasonable limits, the application of rules of the common law which would affect them harshly because of the special circumstances attending their calling."

ognized that which this Court had indicated in dictum in *Sieracki*— when the unseaworthiness of a vessel's cargo containers create a dangerous condition on the dock alongside the vessel, a "Sieracki seaman" is entitled to recover against the shipowner—not because the dock itself is unseaworthy—but because the vessel's cargo containers are unseaworthy, thus exposing the longshoremen on the dock to a seaman's hazards.[13]

What has been overlooked or completely ignored by the Court of Appeals below is that *Sieracki, Hawn* and *Gutierrez* extended the unseaworthiness doctrine to shoreside workers only if they met these two criteria:

1. ". . . doing a seaman's work. . . ."
and
2. ". . . incurring a seaman's hazards."

In extending the shipowner's unseaworthiness liability to shore based equipment furnished by the stevedore, the Court of Appeals below did so solely on the grounds that

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13. *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, at page 214, 10 L.Ed.2d 297, at page 303, 83 S.Ct. 1185 (1963). The cases cited and relied on by this Court reaffirm this "seaman's hazards" criteria:

1. In *Strika* the longshoreman was injured while on the dock because of an unseaworthy wire cable which was a part of the ship's seagoing cargo gear caused a hatch cover on the vessel to fall on him. 185 F.2d 555 (2 Cir. 1950).
2. In *Robillard,* "because of unseaworthy stowage and overladen drafts" the longshoreman was injured by cargo knocked off the deck of the vessel onto the pier. 186 F.Supp. 193 (D.C.N.Y. 1960).
3. In *Cordray,* the longshoreman was injured while on board the vessel because of an unseaworthy wire strap which was a part of the ship's seagoing cargo gear. 258 F.2d 214 (9 Cir. 1958).
4. In *Hagans,* a defective ship's winch caused sacks of beans to strike a longshoreman on the pier, 237 F.2d 477 (3 Cir. 1956).

the longshoremen were "doing a seaman's work". That is, they were involved in moving cargo on the dock or in the railroad car which was to be loaded on the vessel. While that Court quoted the second criteria of *Sieracki*—"incurring a seaman's hazards"—it did not in fact give any consideration to it in relation to the equipment being used or the facts or circumstances of the accidents.

It did not discuss what "seaman's hazards" Longshoreman Law faced in this case which created a danger to him that he would not also have faced had he been working in a gang of warehousemen using the same forklifts rearranging cargo in the same warehouse destined for loading aboard a vessel at some time in the future. It did not, obviously because there were no hazards or dangers which were in any way peculiar to his work as an alleged "Sieracki seaman", as Longshoreman Law was subjected to no greater risk of injury than countless numbers of forklift operators working in land locked warehouses throughout the country.

Longshoreman Law faced precisely the same hazards as any other shore based worker (whether working in a port city or one located at the foothills of the Rocky Mountains) who is employed in a warehouse that uses forklifts to move its merchandise or products in, or out, or inside of the warehouse. Had Law been using the forklift to take the cargo to precisely the same point on the dock for loading onto a motor truck or a railroad car, the hazards or dangers would have been precisely the same as they were with the vessel at the dock. It is clear that neither railroads nor truck lines warrant that such a forklift will be free of all defects (seaworthy) even though the hazards or dangers which Law faced are precisely the same. Yet the fortuitous circumstance that his ship was

moored at the dock is enough to cause the Court below to cast the shipowner in liability on the grounds that it warrants the seaworthiness of the stevedore's forklift.

But the *Chagois* case points up even more dramatically the injustice being done to shipowners by this unrealistic extension of the vessel's warranty ashore. A railroad car (not the ship) containing rice in bulk was being unloaded with a screw auger furnished by the stevedore. The shore based worker was injured while working in the railroad car because this screw auger was "unseaworthy". No one contends, or could contend, that the railroad was liable without fault to Longshoreman Chagois because of the "unseaworthy" screw auger. But the Court below holds the shipowner liable on the grounds that its warranty of the seaworthiness of its vessel extends to this railroad car unloading equipment. And it does so even though Chagois was incurring no more hazards or dangers than those incurred by a railroad worker or grain elevator employee who use such equipment regularly deep in the grain country of our Midwestern states. It is a most strange and peculiar law indeed which requires the shipowner to warrant the safety of equipment being used to discharge the railroad car but imposes no duty whatsoever on the railroad who owns the car which is being unloaded.[14]

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14. In many, if not most, instances railroad cars of grain are unloaded into a grain elevator in advance of the arrival of the ship in port on which it is to be carried. The loading of the cars in Kansas and the unloading of the railroad cars into the grain elevator at the port city are an integral part of the process of moving the grain along on its journey which culminates in its being loaded aboard a vessel. Should the shipowner's warranty of the seaworthiness of its vessel which is still on the high seas extend to the loading equipment in Kansas or to a screw auger being used to unload the railroad cars into the grain elevator at the port city? Obviously not, the absurdity of such a holding is patent. Yet the fortuitous circumstance that the vessel was already at the dock was enough to cast the shipowner in liability in *Chagois*.

Thus although it may be said that Law and Chagois were "doing a seaman's work" in that they were involved in moving cargo to be loaded on a ship,[15] by no stretch of the imagination can it be said that they were "incurring a seaman's hazards" in their exposure to the stevedore's shore based forklift on the dock and its screw auger in the railroad car. They were incurring only the hazards of any shore based worker using the same or similar shore based equipment ashore and nothing more. Both were injured ashore by a shore based hazard and not by any hazards peculiar to the work of seamen.

Certainly, it cannot be said that the conditions of their employment was in any way comparable to those of a true seaman's employment which as this Court said in *Mahnich* makes a true seaman "a ward of the admiralty" who "is subject to the rigorous discipline of the sea, and all the conditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers."[16] These are the employment conditions upon which a shipowner's rigid liability without fault for unseaworthiness is based. Even the wildest imagination, stretched to

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15. In *Sieracki*, this Court stated that "historically the work of loading and unloading is the work of the ship's servants, performed until recent times by members of the crew." 328 U.S. 85, at page 86, 90 L.Ed. 1099, at page 1107, 66 S.Ct. 872 (1946). While there may have been such work by members of the crew of vessels in the early days of the republic, historically it appears that in fact the ancient counterparts of the modern day longshoremen's unions existed in Rome at least as far back as the time of Christ. See, Tetrault, Seaman, Seaworthiness, and Rights of Harbor Workers, 39 Corn. L. Q. 381, at pages 413-14 (1954) and Shields & Byrne, Application of the "Unseaworthiness" Doctrine to Longshoremen, 111 U. of Pa. L. Rev. 1137, at pages 1140-47 (1963).

16. *Mahnich v. Southern Steamship Company*, 321 U.S. 96, at page 103, 88 L.Ed. 561, at page 567, 64 S.Ct. 455 (1944).

its breaking point, could not seriously contend that either Longshoreman Law or Longshoreman Chagois faced any such employment conditions. Both were free to accept or reject both their working conditions and the equipment furnished.

As the very foundation on which the shipowner's unseaworthiness liability to true seamen is based is not present in this case, it is respectfully submitted that its unwarranted and unrealistic extension by the Court below should be reversed.

SHIPOWNER'S WARRANTY OF SEAWORTHINESS EXTENDS ONLY TO THE VESSEL'S OWN SEAGOING CARGO GEAR

While this Court has extended the shipowner's warranty of the seaworthiness of its vessel to some pieces of a ship's seagoing cargo gear furnished by a stevedore, in each instance

(1) The gear furnished by the stevedore was seagoing cargo gear usually and customarily found aboard and furnished by the ship

and

(2) The gear furnished by the stevedore was incorporated into and made a part of the ship's seagoing cargo gear aboard the vessel at the time of the accident.

Petterson involved a cargo block, ordinarily a part of the vessel's own seagoing cargo gear, which was supplied by the stevedore and had been incorporated into the

ship's own gear at the time it broke and injured the longshoreman.[17]

Rogers involved a cargo runner attached to the vessel's winch, also ordinarily furnished by the ship as a part of its own seagoing cargo gear but on this occasion furnished by the stevedore. It had been incorporated into the ship's own seagoing cargo gear when it malfunctioned by rewinding on the vessel's winch drum and injured the longshoreman.[18]

Italia involved a hatch covering (tent), ordinarily a part of the vessel's own cargo gear which was supplied by the stevedore. It had been incorporated into the ship's own seagoing cargo gear when a rope on the hatch covering broke and injured the longshoreman.[19]

All three of these cases involved injuries to longshoremen aboard the vessel while they were not only "doing a seaman's work" but were "incurring a seaman's hazards" as well. None of them involved shore based equipment being used exclusively ashore such as Law's forklift or the screw auger being used to unload the railroad car in *Chagois*. What these three cases demonstrate is that to the extent the shipowner permits a stevedore to replace the ship's own seagoing cargo gear aboard the vessel with like equipment supplied by the stevedore, the shipowner warrants the seaworthiness of that replacement gear.

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17. *Alaska Steamship Company, Inc. v. Petterson*, 347 U.S 396, 98 L.Ed. 798, 74 S.Ct. 601. (1954), affirming 205 F.2d 478 (9 Cir. 1953).

18. *Rogers v. United States Lines*, 347 U.S. 984, 98 L.Ed. 1120, 74 S.Ct. 849 (1954), reversing 205 F.2d 57 (3 Cir. 1953).

19. *Italia Societa Per Azioni di Navegazione v. Oregon Stevedoring Company, Inc.*, 376 U.S. 315, 11 L.Ed.2d 732, 84 S.Ct. 748 (1964).

Despite this Court's very limited extension of the shipowner's warranty to stevedore equipment thus incorporated into and made a part of the ship's seagoing cargo gear, the Court below has concluded that this Court either has, or would, extend the warranty without limit to any and all shore based equipment which might be involved in moving cargo on the dock or on the land if that cargo is to be loaded on, or has been unloaded from, a vessel. *Petterson, Rogers* and *Italia* do not sanction any such unlimited extension of the shipowner's warranty of the seaworthiness of its vessel. Indeed, they could not without completely rejecting the very basis on which this Court relied in *Sieracki, Hawn* and *Gutierrez* in extending the shipowner's warranty to certain shore based workers in the first place.

It is respectfully submitted that *Petterson, Rogers* and *Italia* establish the fair, reasonable and realistic extent to which a shipowner's warranty of the seaworthiness of its vessel should be extended to equipment furnished by the stevedore, and this Court should decline to extend the warranty to shore based equipment simply because it is used in moving cargo.

ATTEMPTED JUSTIFICATION FOR EXTENSION OF WARRANTY ASHORE IS UNSOUND

The Court below recognized the "harshness of the principle" it espoused in extending the shipowner's warranty of the seaworthiness of its vessel to the stevedore's shore based equipment. It attempted to justify such an unrealistic result on the ground that the shipowner would be able to pass this liability on to the stevedore. (A. 101-102) Or stated more realistically and more demonstrably,

its justification was that it matters not how ridiculous or how absurd or how harsh the law becomes in extending a shipowner's unseaworthiness liability because some third party will have to pay the damages for which the shipowner is allegedly liable anyway!

The injustice of this approach is obvious—the stevedore is saddled with liability without fault to its own employees for injuries resulting from purely shore based hazards which are no different from the shore based hazards faced by shore based employees in the railroad and trucking industries, in the grain elevator business, in warehouse operations and in the building materials trade, to name only a few. The shore based hazards are the same, but a vessel at the dock which the law may hold liable for only a moment—a moment long enough to require the stevedore to pay the damages—singles out the stevedore for treatment which is unknown to any other employer whose employees incur the same shore based hazards from the same types of shore based equipment.[20] And while thus singled out the stevedore at the same time is equally liable to pay workmen's compensation benefits under the laws of the state where the injury occurs!

Completely land locked workers, in most instances far removed from any navigable waters, encounter precisely the same hazards as those incurred by longshoremen in using like equipment on the docks and in dockside warehouses.

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20. For example, a railroad or a truck line is not held liable to pay damages to a grain elevator employee who is injured while using the grain elevator's screw auger in discharging a railroad car or a motor truck on the theory that it can pass this liability on to the grain elevator as the injured man's employer, since the grain elevator supplied the equipment.

For example, first, the Court of Appeals decision in which the warranty has been extended:

1. Forklifts of the type in this case are used in almost every warehouse in the country, not only for moving freight inside them but in loading and unloading truck and rail cars as well.

2. The grain conveyors and screw auger of *Chagois* find their counterpart at grain elevators throughout the land.[21]

3. The hopper in *Spann*[22] used to load the vessel's cargo into trucks was of the type used by building material firms and mining companies operating strictly on land to load trucks with sand, gravel, ready mixed cement, coal, caliche, etc.

4. The straddle carriers in *Gebhard*[23] are also used in strictly land based operations when no vessels are at the docks in moving the containers in the marshalling yards and in loading and unloading the containers from the motor trucks which bring them to or take them from the marshalling yards. Similar straddle carriers are also used by other industries, such as for the movement of large amounts of finished lumber in a lumber yard.

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21. An earlier decision from the Court of Appeals below also involved a grain conveyor used in unloading a barge. *Defjes v. Federal Barge Lines, Inc.*, 5 Cir. 1966, 361 F.2d 422, cert. den. 385 U.S. 969, 17 L.Ed.2d 433, 87 S.Ct. 504 (1966).

22. *Spann v. Lauritzen*, 3 Cir. 1965, 344 F.2d 204, cert. den. 382 U.S. 938, 15 L.Ed.2d 348, 86 S.Ct. 386 (1965).

23. *Gebhard v. SS HAWAIIAN LEGISLATOR*, 9 Cir. 1970, 425 F.2d 1303.

Secondly, for example the Court of Appeals decisions in which the warranty has *not* been extended:

1. Three decisions of the Court of Appeals for the Second Circuit[24] involved temporary skids attached to the dock on which cargo being discharged from the ship was landed and then taken into the warehouse. These are comparable to temporary attachments to landing platforms over which trucks and rail cars are loaded or unloaded.
2. *Forkin*[25] involved a rope being used to hoist a conveyor into place to discharge baggage from a ship which is not unlike the method of hoisting similar conveyors in warehouses throughout the country.
3. The shoreside crane in *McKnight*[26] is of a type used to make heavy lifts in manufacturing plants and for loading or unloading such lifts from trucks or rail cars.
4. The rope and the lifting device in the warehouse in *Daniel*[27] finds its counterpart in countless land locked warehouses.

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24. *Penoro v. Rederi A/B Disa*, 2 Cir. 1970, 422 F.2d 392; *Tarabocchia v. Zim Isreal Navigation Co., Ltd.*, 2 Cir. 1969, 417 F.2d 476, remanded for reconsideration on other grounds, U.S. 28 L.Ed.2d 211, 91 S.Ct. 914 (1971); *Fredricks v. American Export Lines, Inc.*, 2 Cir. 1955, 227 F.2d 450, cert. den. 350 U.S. 989, 100 L.Ed. 855, 76 S.Ct. 475 (1956).

25. *Forkin v. Furness, Withy & Co., Ltd.*, 2 Cir. 1963, 323 F.2d 638.

26. *McKnight v. N. M. Patterson & Sons, Ltd.*, 6 Cir. 1960, 286 F.2d 250, cert. den. 368 U.S. 913, 7 L.Ed.2d 130, 82 S.Ct. 189 (1961).

27. *Daniel v. Skibs A/S Hilda Knudsen*, 3 Cir. 1966, 368 F.2d 178, cert. den. 386 U.S. 990, 18 L.Ed.2d 335, 87 S.Ct. 1304 (1967).

5. Tractors, such as the one used in *Weigal*[28] to move the railroad cars on the dock perform the same function alongside warehouses far removed from any docks or vessels.

To the extent that a stevedore's gear is used in place of the vessel's seagoing cargo gear and has been incorporated into it, there is some basis for extending the shipowner's warranty of seaworthiness to it because those shore based workers who might be injured by it are incurring a true seaman's hazards—hazards which are peculiar to the vessel itself.

But if our cherished concept of "Equal justice under law" is not to become an idle dream for the stevedore, it cannot be subjected to liability without fault as to its shore based equipment—a liability that none of its shoreside counterparts using the same or similar equipment must endure. It is a strange, peculiar and unsound rule of law which can justify imposing liability on the shipowner primarily, if not entirely, because it is the stevedore, and not the shipowner, who must respond in damages.

It is respectfully submitted that for its shore based equipment and the shore based hazards which their shore based employees incur, the stevedore should be accorded the same treatment under the law as that accorded other shore based employers using the same or similar equipment. The decision of the Court below fails to accord this equality of treatment and should therefore be reversed.

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28. *Partenweederei, MS Belgrano v. Weigel,* 9 Cir. 1962, 299 F.2d 897, cert. den. 371 U.S. 830, 9 L.Ed.2d 67, 83 S.Ct. 49 (1962), reh. den. 371 U.S. 906, 9 L.Ed.2d 168, 83 S.Ct. 205 (1962), motion for leave to file second petition for reh. den. 375 U.S. 871, 11 L.Ed. 2d 101, 84 S.Ct. 26 (1963).

EXTENSION OF ADMIRALTY TORT JURISDICTION TO ACCIDENTS ON LAND IS UNPRECEDENTED

While this point is covered in considerable detail in the briefs filed by the parties, a few brief comments seem appropriate. The Constitutional grant of admiralty tort jurisdiction under Article III, Section 2, has traditionally been bounded by locality and not construed to include personal injuries occurring on the land.[29] Congress, by the Extension in Admiralty Act,[30] included all cases of injury "caused by a vessel on navigable water" even if done or consummated on land, but this Court, as recently as 1969, noted that injuries on the pier by pier-based equipment would be outside the purview of the extension statute.[31]

Unseaworthiness is merely a remedy or doctrine of liability available to "Sieracki-seamen" as well as crewmembers.[32] This court has never held that it affords an inde-

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29. *DeLovio v. Boit*, CC D Mass., 2 Gall 398, 7 Fed. Cas. No. 3776 (1815); *Philadelphia, Wilmington & Baltimore RR v. The Philadelphia & Harve De Grace Steam Towboat Co.*, 23 How 209, 16 L.Ed. 433 (1860); *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469, 66 L.Ed. 321, 42 S.Ct. 157 (1922).

30. 62 Stat. 496, 46 U.S.C. § 740.

31. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 24 L.Ed. 2d 371, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895.

32. *Usner v. Luckenbach Overseas Corp.*, 400 U.S. 494, 27 L.Ed. 2d 562, 91 S.Ct. 514 (1971);

> Seamen, by contrast to longshoremen, have been given a statutory right to damage actions against their employer in lieu of workmen's compensation coverage. This includes all injuries sustained in the course of their employment, as crewmembers, whether at sea or on land.

O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 87 L.Ed. 596, 63 S.Ct. 488 (1943).

Compare:

> 44 Stat. 1424, 33 U.S.C. § 903(a)(1)

pendent basis for invoking the admiralty and maritime jurisdiction of the United States in cases occurring upon the land and not caused by a vessel, her gear, appurtances or cargo.[33]

The problems created by substituting a "status" for a "situs" test of admiralty tort jurisdiction are exemplified by the lower court opinions in the case *sub judice* and the many conflicting decisions cited therein and also by the parties upon this appeal. The choice which has been made below was rejected by this Court in *Nacirema Operating Co.*, involving longshoremen's rights under 33 U.S.C. §901 et seq, for the same reason it should be rejected in this case—such a rule

> ". . . simply replaces one line with another whose uncertain contours can only perpetuate on the landward side of the Jensen Line, the same confusion that previously existed on the seaward side."[34]

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33. The subject is thoroughly discussed by Judge R. Dorsey Watkins of the District of Maryland in *Paisley Green v. Pope & Talbot, Inc.*, Admiralty No. 4809, U.S.D.C. Maryland, and four companion cases decided April 6, 1971, as yet unreported; Also see the opinion of Judge Wright in *Gebhard v. SS HAWAIIAN LEGISLATOR*, 9 Cir., 1970, 425 F.2d 1303, at page 1313 (dissenting).

34. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, at page 223, 24 L.Ed.2d 371, at page 380, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895.

CONCLUSION

For the foregoing reasons, the National Maritime Compensation Committee respectfully submits the judgment of the Court below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1971

NO. 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL and GULF STEVEDORE CORP., *Petitioners*

v.

BILL LAW, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE

To The Honorable Judges Of Said Court:

All of the parties in this case have given their written consent to the filing of a brief as *amicus curiae* by the National Maritime Compensation Committee and such consent has been filed with the Clerk of the Court.

The National Maritime Compensation Committee respectfully moves the Court to grant it leave to file the accompanying brief as *amicus curiae* in support of the Petitioners after the time for the filing of such a brief under Rule 42 of this Court has expired, and as grounds therefor would respectfully show:

1.

The question presented to the Court in this case is one of first impression. Since the decision of the Court of Appeals below involves an unprecedented landward extension of a shipowner's warranty of the seaworthiness of its vessel to a stevedore's shore based equipment being used entirely ashore, it is one of almost unlimited importance and significance to the maritime industry of this country.

2.

The National Maritime Compensation Committee is a nationwide organization whose membership is composed of representatives of seventeen maritime associations from substantially all of the maritime centers in the United States.[1] The membership of these associations include substantially all types of employers who furnish shore based employees and shore based equipment to perform

1. These are: Boston Shipping Association, Inc., Great Lakes Terminal Association, Hampton Roads Maritime Association, Inc., Lake Carriers Association, Master Contracting Stevedores Association of the Pacific Coast, Inc., Mobile Steamship Association, Inc., National Association of Stevedores, New Orleans Steamship Association, New York Shipping Association, Inc., North Atlantic Ports Association, Pensacola Steamship Association, Philadelphia Marine Trade Association, Portland Shipping Association, Inc., Savannah Maritime Association, Steamship Trade Association of Baltimore, Inc., Tampa Steamship Association, and West Gulf Maritime Association.

services for shipowners while vessels are in port. The National Maritime Compensation Committee, therefore, is a particularly appropriate organization to file a brief *amicus curiae* in order that this Court might have the views of substantially all segments of the maritime industry in considering this important question of first impression.[2]

3.

The accompanying Brief Amicus Curiae for which leave to file is sought is not a reiteration or "rehash" of Petitioners' brief or arguments. Instead the Brief Amicus Curiae is directed to the following additional significant considerations which this Court should carefully weigh and evaluate in making its decision in this case:

1. In *Sieracki*,[3] *Hawn*[4] and *Gutierrez*,[5] this Court held that the shipowner's warranty of the seaworthiness of its vessel is to be extended to a particular longshoreman only

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2. In one other case involving an equally important issue to the maritime industry as a whole, the National Maritime Compensation Committee filed a Brief Amicus Curiae to acquaint the Court with the views of its members with respect to the problems involved. See *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 24 L.Ed.2d 371, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895, in which this Court held that longshoremen injured on the dock as an extension of the land were not entitled to recover under the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S. C.A., §901 ff, but, just like every other shore based worker, only under the state workmen's compensation act.

3. *Seas Shipping Company, Inc. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099, 66 S.Ct. 872 (1946).

4. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 98 L.Ed. 143, 74 S.Ct. 202 (1953).

5. *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 10 L.Ed.2d 297, 83 S.Ct. 1185, reh. den. 374 U.S. 858, 10 L.Ed.2d 1082, 83 S.Ct. 1863 (1963).

(1) if he is "doing a seaman's work", and (2) if he is "incurring a seaman's hazards." In extending the shipowner's warranty to the contract stevedore's forklift truck being used solely on the dock in this case and to a screw auger being used to discharge a cargo of grain from a railroad car into a grain elevator hopper on land two weeks later in its *Chagois* case,[6] the Court of Appeals below completely disregarded the most significant criteria —the longshoremen were not "incurring a seaman's hazards". These longshoremen were incurring precisely the same hazards any land locked worker faces who operates a forklift to move merchandise in a warehouse or who operates a screw auger to discharge a railroad car into a grain elevator far removed from any navigable waters. As these longshoremen were not incurring any seamen's hazards, it is respectfully submitted that the Court below failed to properly adhere to the criteria set down by this Court.[7]

2. In *Petterson*,[8] *Rogers*[9] and *Italia*,[10] this Court extended the shipowner's warranty of the seaworthiness of its vessel to gear furnished by a stevedore (1) which was

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6. *Chagois v. Lykes Bros. Steamship Co., Inc.*, 5 Cir. 1970, 432 F.2d 388, petition for writ of certiorari pending as No. 70-64, October Term, 1971, *Lykes Bros. Steamship Co., Inc., Petitioner v. Joseph Chagois, Respondent.*

7. See full discussion, Brief Amicus Curiae, pages 5 to 12.

8. *Alaska Steamship Company, Inc. v. Petterson*, 347 U.S. 396, 98 L.Ed. 798, 74 S.Ct. 601 (1954), affirming 205 F.2d 478 (9 Cir. 1953).

9. *Rogers v. United States Lines*, 347 U.S. 984, 98 L.Ed. 1120, 74 S.Ct. 849 (1954), reversing 205 F.2d 57 (3 Cir. 1953).

10. *Italia Societa Per Azioni di Navegazione v. Oregon Stevedoring Company, Inc.*, 376 U.S. 315, 11 L.Ed.2d 732, 84 S.Ct. 748 (1964).

seagoing cargo gear usually and customarily found aboard and furnished by a vessel and (2) which gear had been incorporated into and made a part of the ship's seagoing cargo gear aboard the vessel at the time of the accident. Thus all three cases involved longshoremen injured aboard a vessel while not only doing a seaman's work, but incurring a seaman's hazards as well. *Petterson, Rogers* and *Italia* do not sanction the landward extension of the shipowner's warranty in this case, and obviously could not, without completely rejecting the very basis on which this Court relied in *Sieracki, Hawn* and *Gutierrez* in making this liability without fault remedy available to certain shore based workers in the first place. It is respectfully submitted that the teachings of these cases need to be carefully considered in arriving at a disposition of the case presently before the Court.[11]

3. The attempted justification for the extension of the warranty to shore based equipment being used on land such as the forklift in the present case and the screw auger being used to discharge grain from a railroad car in the *Chagois* case is patently unsound and unrealistic. The justification asserted being that the shipowner is only momentarily liable and will not have to pay the damages for which it is allegedly liable because in most cases these damages will be paid for him by the stevedore through an indemnity action. The shore based hazards incurred by longshoremen on the dock from shore based equipment are no different from the same hazards incurred by other workers in completely landlocked operations far removed from any navigable waters. These landlocked workers have their workmen's compensation remedy against their

11. See full discussion, Brief Amicus Curiae, pages 12 to 14.

employer for these same shore based hazards. But by extending the shipowner's warranty ashore as the Court below has done, the stevedore is required to pay not only the same workmen's compensation benefits as the employer of a landlocked worker, but also must respond by paying the damages for which the shipowner is held liable only for a moment—a moment only long enough to require the stevedore to pay the damages. It is respectfully submitted the injustice being done by such a rule of law needs careful examination, consideration and analysis by this Court.[12]

4. Attempts to extend admiralty tort jurisdiction to accidents on land on the basis of an employee's "status" and not the "situs" of the accident have never been acceptable to this Court. *Nacirema Operating Co.* is this Court's most recent rejection of this "status" test[13] and it is respectfully submitted it should reject it again in this case.[14]

CONCLUSION

For the foregoing reasons, the National Maritime Compensation Committee respectfully submits that its Motion for

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12. See full discussion, Brief Amicus Curiae, pages 14 to 18.

13. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 24 L.Ed. 2d 371, 90 S.Ct. 347 (1969); reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895.

14. See full discussion, Brief Amicus Curiae, pages 19 to 20.

Leave to File Late its Brief Amicus Curiae should be granted.

Respectfully submitted,

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SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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Respondent,

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

QUESTION PRESENTED FOR REVIEW

As originally stated in Petitioners' brief in chief filed herein the question presented for review is:

Does the warranty of seaworthiness owed by a vessel extend to the operator of a fork lift machine who is operating the machine exclusively upon the dock moving cargo from its position of dockside storage to a point on the dock from which it is subsequently loaded onto the vessel and who is injured by reason of some fault in the lift machine and not by the vessel or its equipment?

RECENT DECISIONS

A. Decisions in Support of Petitioners' Argument.

Since the time of filing of Petitioners' brief herein, there have been several decisions, all originating in the United States District Court of Maryland (but decided by different District Judges), wherein the warranty of seaworthiness was denied to longshoremen injured on the shore by shorebased equipment. These cases are *Sydnor vs. Villian & Fassioe Compania Internationale di Riunite di Navigazione,* (D.C. Md., 1971) 323 F.Supp. 850; (*Diggs vs. American Export Isbrandtsen Lines, Inc.,* (D.C. Md., February 24, 1971, Civil Action No. 21557-N);[1] and a consolidated opinion entered in five (5) unrelated cases, *Green vs. Pope & Talbott, Inc.,* etc., (D.C. Md., 1971) 328 F.Supp. 71.

In the *Sydnor* case a longshoreman was injured on the dock when struck in the back by a bale of rags; the rags were pushed over by a tractor as it was transferring the bales on the pier in preparation for their loading onto the defendant vessel. The injured longshoreman claimed the vessel was unseaworthy and negligent and contended "that the preparatory loading of a vessel in navigable waters is work in the ship's service." 323 F.Supp. 850 at 851. The Court considered the cases of *Byrd vs. American Export Isbrandtsen Lines Inc.,* (E.D. Pa., 1969) 300 F.Supp. 1207; *Litwinowicz vs. Weyerhouse S.S. Co.,* (E.D. Pa., 1959) 179 F.

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[1]The case of *Diggs vs. American Export Isbrandtsen Lines, Inc.* has not been reported and a copy of said opinion is appended hereto as Appendix A for the ready reference of the Court.

Supp. 812; and *Gutierrez vs. Waterman S.S. Corp.*, 373 U.S. 206, 83 S.Ct. 1185, 10 L.Ed.2d 297, as well as other decisions and stated that:

> "This court feels that to hold liable a ship for the injuries suffered by a stevedore, incurred upon the dock in preparation for the loading of the vessel, where no ship's personnel, gear or appurtenances were involved, is an unwarranted extension of the maritime doctrine of unseaworthiness." 323 F.Supp. at 852-3.

The District Court then discussed this Court's recent decisions of *Nacirema Operating Co., Inc. vs. Johnson*, 396 U.S. 212, 90 S.Ct. 347, 24 L.Ed.2d 371 (1969); and *Usner vs. Luckenbach Overseas Corp.*, 400 U.S. 494, 91 S.Ct. 514, 27 L.Ed.2d 562 (1971) and concluded:

> "Based upon the Supreme Court's recent holdings, this court feels that liability of a vessel is being circumscribed; and when, as in this case, a longshoreman is injured on the pier by pier-based equipment, when no ship's equipment or personnel are involved and no pier-based equipment is being used in the actual loading or unloading of the vessel, no recovery should be permitted against the vessel." 323 F.Supp. 850 at 853.

In *Diggs vs. American Export Isbrandtsen Lines, Inc.*, supra, (Appendix A) a longshoreman was working in a boxcar on the pier near the vessel when he was injured. The longshoreman's specific task was to

stow cargo (located in the boxcar) in a metal case which would be pulled from the boxcar by a cable attached to a tractor located upon the pier and driven by a fellow longshoreman. The tractor driver, without waiting for orders or giving any warning, moved the tractor which caused the cable to wrap around the plaintiff-longshoreman's leg and injure him. The District Court, relying on its own *Sydnor* case, supra, and *Usner vs. Luckenbach Overseas Corp.*, supra, held:

> "In this case, the undisputed allegations show the accident occurred as a result of discharging cargo from a boxcar and not from the loading or unloading of cargo from a vessel. The locus of the accident was upon the pier, between fellow longshoremen, involving no ship's gear, appurtenances or personnel or pier-based equipment, such as cranes, conveyors, etc., used in the loading of a vessel. These facts fail to state a claim upon which relief can be granted and defendant's motion to dismiss is therefore granted."

The *Green vs. Pope & Talbott, Inc., supra,* decision involved five (5) cases consolidated for purposes of the opinion. In addition to the *Green* case, the opinion also considered the cases of *Randolph vs. Central Gulf Steamship Corp.* (Adm. No. 4997), *Robinson vs. Grace Lines, Inc.* (Civil Action No. 18189), *Eaddy vs. Ember Dampfercompagnie A. G. Aktiengesellschaft* (Civil Action No. 18220), and *Miles vs. S.S. Prodromos* (Civil Action No. 19814). The District Court declined to extend the seaworthiness warranty to a longshoreman who

was struck by a case which fell from a pallet in a warehouse after having been discharged directly from the vessel into the warehouse (Green); to a longshoreman who was working in a gondola car from which cargo was being loaded onto a vessel when the hook from a shore-based crane struck the gondola car (Randolph); to a longshoreman who fell over a piece of wood on the pier while guiding a pontoon being lowered from a vessel to the pier (Robinson); to a longshoreman injured in the warehouse by a defective pallet which had just come from a vessel (Eaddy); and to a longshoreman who was injured inside a grain elevator when a control box for the conveyor belt exploded (Miles).

After a scholarly review of developments in the area of maritime torts, including this Court's decisions of *Gutierrez, Nacirema,* and *Usner,* the District Court in *Green* refers to the cases of *Gebhard vs. S.S. Hawaiian Legislator,* (9 Cir., 1970) 425 F.2d 1303; *Chagois vs. Lykes Bros. S.S. Co.,* (5 Cir., 1970) 432 F.2d 388; and to the Fifth Circuit Court of Appeals decision in the instant case, *Law vs. Victory Carriers, Inc.,* (5 Cir., 1970) 432 F.2d 376 and comments on these latter three cases as follows:

> "The general approach of these and similar all-expansive cases is that if someone who may be called a 'longshoreman' is injured on a pier or in a pier-based structure, he should be allowed to recover from any vessel that happens to be berthed at the pier and the ship's owner. This 'liability without theory' ignores the situs of

> the injury, ignores causation, ignores whether realistically the ship is being loaded or unloaded, and ignores the true status of the injured party. This court rejects such an approach as not in accord with the Supreme Court's most recent decisions." 328 F.Supp. 71 at 86.

The Court in *Green* was of the opinion *Nacirema Operating Co., Inc. vs. Johnson,* supra, was dispositive of jurisdictional questions presented in the consolidated cases which arose from accidents which occurred on the pier and were caused by pier-based equipment. In particular the Court relies on Mr. Justice White's language in *Nacirema* as follows:

> "There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the Extension Act to amend the Longshoremen's Act would not affect this result, *since longshoremen injured on a pier by pier-based equipment would* still remain ouside the [Extension] Act. And construing the Longshoremen's Act to coincide with the limits of admiralty and jurisdiction — whatever they may be and however they may change — simply replaces one line with another . . . 396 U.S. at 222-23." 328 F. Supp. 71 at 84.

B. *Contrary Decision.*

A contrary result has been reached in the recent

case of *McNeil vs. A/S Havtor,* (E.D. Pa., 1971) 326 F. Supp. 226. In *McNeil* a longshoreman was injured when a "squeeze lift" truck he was operating struck an undetermined object on a pier shed floor; as a result of the striking, the steering wheel of the truck spun and a knob attached to the wheel struck the longshoreman's wrist. The longshoreman was operating the lift truck within the confines of a warehouse where he would transfer cases from pallets owned by his employer to pallets to pallets owned by the defendant; these pallets would then be taken by other fork lift operators to alongside the vessel for ultimate loading onto the vessel. The district court, relying on the Court of Appeals decision in the instant case and *Byrd vs. American Export Isbrandsten Lines,* (E.D. Pa., 1969) 300 F.Supp. 1207, held that the longshoreman "performing the operation indicated by the instant facts was, as a matter of law, engaged in the loading process and in the service of the ship." The Court further found the claimant was "entitled to the benefits of the doctrine of unseaworthiness."

Consequently, the district court in *McNeil,* relying upon what Petitioners herein earnestly urge to be the erroneous ruling of the Court below, has moved the seaworthiness warranty even further ashore. The Court in *McNeil* gives no consideration to the Extension of Admiralty Jurisdiction Act and justifies its holding upon the conclusion that as a *matter of law* the claimant was engaged in the loading process and in the service of the ship even though the claimant was working exclusively in a warehouse and was apparently injured through some fault in the warehouse floor

coupled with a knob on the steering wheel of the lift truck he was operating. The court, as did the Court below, noted that this was not an unreasonable or harsh application of the unseaworthiness rule because the ship owner could pass the burden along to the stevedore under an indemnity theory. Thus, it is again illustrated, as in the instant case, that the vessel is assigned a secondary, passive role in the application of the seaworthiness doctrine. As observed by the Court in *Green vs. Pope & Talbott, Inc.*, supra.

> "This 'liability without theory' ignores the situs of the injury, ignores causation, ignores whether realistically the ship is being loaded or unloaded, and ignores the true status of the injured party." 328 F.Supp. 71 at 86.

To this observation of the Maryland District Court may be added that this unwarranted extension of the seaworthiness ambit ashore completely ignores the basic rationale for imposing absolute liability on a ship owner for unseaworthiness In *Mahnich vs. Southern S.S. Co.*, 1944, 321 U.S. 96, 64 S. Ct. 455, 88 L.Ed. 561, this Court imposed absolute liability upon a ship owner because of the unique nature of a seaman's calling, and stated:

> "We have often had occasion to emphasize the conditions of the seaman's employment . . . which have been deemed to make him a ward of admiralty and to place large responsibility for his safety on the owner. He is subject to the rigorous discipline of the sea, and all the con-

> ditions of his service constrain him to accept, without critical examination and without protest, working conditions and appliances as commanded by his superior officers. These conditions, which have generated the exacting requirement that the vessel or the owner must provide the seaman with seaworthy appliances with which to do his work, likewise require the safe appliances be furnished when and where the work is done." 321 U.S. at 103-4.

Bill Law, the Respondent herein, was not subject to the rigorous discipline of the sea nor were the conditions of his employment such as would constrain him to accept, without critical examination or protest, working conditions or appliances furnished by the vessel. He was in no manner subjected to any conditions which may have existed on board the vessel nor was he injured by any cargo, appurtenance, equipment, or appliance of the vessel. He was free to either accept or reject the working conditions and the lift machine involved; an election which was not available to the true sea-going seaman.

The court below in the instant case and in its opinion of *Chagois vs. Lykes Bros. S.S. Co.*, (5 Cir., 1970) 432 F.2d 388, and the *McNeil vs. A/S Havtor* district court case, supra, have clearly departed from this court's decisions of *Gutierrez vs. Waterman Steamship Corp.*, supra; *Nacirema Operating Company vs. Johnson*, supra; and *Usner vs. Luckenbach Overseas Corporation*, supra, and have extended the seaworthiness doctrine beyond the intent of this Honorable Court. The

Court of Appeals in the instant case has visited liability for unseaworthiness upon the vessel even though the injury was sustained wholly ashore (some fifty (50) feet from the vessel) and was caused by non-vessel equipment (a fork lift machine) operated exclusively upon the pier; the same Court of Appeals in its decision of *Chagois vs Lykes Bros Steamship Company, Inc.*, supra, subsequently carried the seaworthiness warranty further ashore; and *McNeil vs. A/S Havtor*, supra, has extended the warranty even further into the pier-located warehouse. If the instant case is not reversed, the next step will be to extend the warranty into the inland warehouse or to the truck or train bringing cargo to the dock from far inland.

It is submitted that the most logical and realistic view on the issue before the Court is that expressed by the District Court below in the instant case and by the District Court of Maryland in the recent cases of *Sydnor, Diggs,* and *Green* referred to herein.[2] The warranty of seaworthiness should not be extended to those instances where a longshoreman or dockside worker is injured upon a dock or in a warehouse while preparing for the loading of a vessel where none of the ship's personnel, gear, equipment, or appurtenances are involved in the accident. The holding of the Court of Appeals in the instant case that a pier-based worker who is injured solely by pier-based equipment on the

---

[2]See also the cases cited in Petitioners' brief in chief of *Drumgold vs. Plovba*, (E.D. Va., 1966) 260 F.Supp. 983; *Partenweederei, MS Belgrano vs. Weigel*, (9 Cir., 1962) 299 F.2d 897; *Daniel vs. Skibs A/S Hilda Knudsen*, (3 Cir., 1966) 368 F.2d 178; and *Cannida vs. Central Gulf Steamship Corporation*, (E.D. Pa., 1970) 317 F.Supp. 873.

pier is entitled to sue the vessel for unseaworthiness is erroneous and should be reversed.

CONCLUSION

In those cases involving the issue presently before the Court which have come to the attention of Petitioners since filing their brief in chief herein, the prevalent view, based on logic and authority, has been to deny the seaworthiness warranty to a pier-based worker injured ashore by pier-based equipment. For the reasons stated herein and in Petitioners' brief in chief, the judgment of the Court below should be reversed and the cause remanded with direction to affirm the judgment of the district court.

Respectfully submitted,

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PROOF OF SERVICE

I, W. BOYD REEVES, one of the attorneys for the Petitioners herein and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the _____ day of September, 1971, I served three copies of the foregoing Supplemental Brief of Petitioners on Bill Law, Respondent herein, by mailing the same in a duly addressed envelope, with first class postage prepaid, to Honorable Ross Diamond, Jr., 610 Van Antwerp Building, Mobile, Alabama, 36602, and to Honorable Joseph B. Stahl, 804 Baronne Building, 305 Baronne Street, New Orleans, Louisiana, 70112, attorneys for Respondent.

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APPENDIX A

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MAYWOOD C. DIGGS

v. Civil Action No. 21557-N

AMERICAN EXPORT ISBRANDTSEN LINES, INC.

Filed: February 24, 1971.

Jerome B. Monfred and Monfred, Lentz & Hooper, of Baltimore, Maryland, for the Plaintiff.

Randall C. Coleman, John C. Murphy and Ober, Grimes & Shriver, of Baltimore, Maryland for the Defendant.

Northrop, Chief Judge.

Plaintiff, Maywood C. Diggs, a longshoreman for the Atlantic & Gulf Stevedores, brings suit under this court's admiralty and maritime jurisdiction against the American Export Isbrandtsen Lines, Inc., owner and operator of the vessel SS EXPORT AMBASSADOR. The facts alleged by the plaintiff are undisputed.

Plaintiff states that on or about the 30th day of September, 1968, the vessel described above was

moored at Pier #8, Dundalk Marine Terimal, for the purpose of loading cargo. In the course of discharging his duties as a longshoreman, the plaintiff was called upon to enter a boxcar located near the vessel to assist in removing its cargo. Plaintiff's specific function was to stow cargo in a metal case that would be pulled from the boxcar by a cable attached to a tractor located upon the pier and driven by a fellow longshoreman. While performing this duty, the tractor driver, without waiting for orders or giving any warning, moved the tractor. As the tractor moved, the cable which was attached to one end of the tractor and around one of the cases got hooked under the door of the boxcar and wrapped around plaintiff's leg. As the cable tightened it caused injury to his leg. Plaintiff alleges that this accident was the result of the vessel's unseaworthiness and the defendant's negligence. There is no allegation, however, by the plaintiff that any of the vessel's gear, appurtenances, or personnel were involved in any manner or caused the accident nor was there any shore-based equipment in use in the loading of the vessel involved.

This vourt feels that this case can be decided on the basis of its recent decision in *Sydnor v. Villian & Fassioe Compania Internazionale di Genova Societa Riunite di Navigazione, S.p.A.*, Civil No. 21021-N (D. Md., filed February 23, 1971), a copy of which is attached hereto. In that case, a longshoreman was injured on the pier when a bale of rags was pushed over on him by a tractor, driven by another longshoreman, who was transferring the bales to another part of the pier in preparation for their loading on the defendant vessel.

No use was being made of any ship's gear or personnel and there was no pier-based gear in use in the actual loading of this vessel. All activity and equipment of which the plaintiff complained was being used in preparation for the loading. This court held that the single act of negligence by one longshoreman to another did not require a finding of unseaworthiness. This decision was based upon the recent Supreme Court decision in *Usner v. Luckenbach Overseas Corp.*, 39 U.S.L.W. 4146 (1971) and the Fourth Circuit and district court opinions in *Lundy v. Isthmian Lines, Inc.*, 423 F.2d 913 (4th Cir. 1970), and *Benton v. United States Lines, Inc.*, 297 F. Supp. 87 (D. Md. 1968), *aff'd*, 408 F.2d 378 (4th Cir. 1969). In this case, the undisputed allegations show the accident occurred as a result of discharging cargo from a boxcar and not from the loading or unloading of cargo from a vessel. The locus of the accident was upon the pier, between fellow longshoremen, involving no ship's gear, appurtenances or personnel or pier-based equipment, such as cranes, conveyors, etc., used in the loading of a vessel. These facts fail to state a claim upon which relief can be granted and defendant's motion to dismiss is therefore granted.

Edward S. Northrop
Chief United States
District Judge

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In the Supreme Court of the United States

OCTOBER TERM, 1971

No. ~~1002~~ 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL
and
GULF STEVEDORE CORP., PETITIONERS
v.
BILL LAW, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF THE AMERICAN TRIAL LAWYERS ASSOCIATION AS AMICUS CURIAE

AMERICAN TRIAL LAWYERS ASSOCIATION
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In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 1092

VICTORY CARRIERS, INC., SS SAGAMORE HILL
and
GULF STEVEDORE CORP., PETITIONERS

v.

BILL LAW, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF ON BEHALF OF THE AMERICAN TRIAL LAWYERS ASSOCIATION AS AMICUS CURIAE

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The American Trial Lawyers Association, Admiralty Section, respectfully prays that this Honorable Court sustain the decision in the above-entitled action rendered by the United States Court of Appeals for the Fifth Circuit.

I.
Consent of Parties

All of the parties in the above-entitled action have given their written consent to the filing of this Brief Amicus Curiae, and such written consent has been filed with the Clerk of this Honorable Court.

II.
Standing

The American Trial Lawyers Association is a national bar association whose membership exceeds 25,000 lawyers who are primarily engaged in the practice of law on behalf of plaintiffs in personal injury litigation. The admiralty section of this association includes most of the attorneys who specialize in the maritime personal injury law. These attorneys represent seamen, longshoremen and other maritime workers who are engaged in a hazardous industry and, as such, are recognized as having a special status by virtue of legislation and decisions of the courts.

This Association and the people it represents are directly affected by the judicial application of the doctrine of unseaworthiness to dockside personnel injured as a result of stevedore's equipment. More specifically, this Association is vitally concerned with this appeal, not only for the instant case, but also for the effect this result will have on similar cases now existing throughout the country.

As a resolution of the issues in this case will materially affect the outcome of many others, this case assumes a position of major importance to thousands of maritime workers, the maritime industry and the admiralty bar.

The American Trial Lawyers Association, Admiralty Section, has filed briefs Amicus Curiae with this Honorable Court on behalf of seamen and longshoremen in other cases.

III.
Question Presented

Where a longshoreman is injured by stevedoring equipment while on a dock in the course of loading a vessel, does that longshoreman possess a cause of action against the vessel owner for unseaworthiness?

IV.
Summary of Argument

The federal courts of the United States may exercise admiralty jurisdiction by virtue of Section 1333 of Title 28 of the United States Code. The scope of that jurisdiction is prescribed by both the General Maritime Law and the Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C. 740 (1964) (hereinafter cited as Extension Act). The scope of admiralty jurisdiction is sufficiently expansive to include a cause of action for unseaworthiness arising out of personal injuries sustained by a longshoreman on a dock as a result of a malfunction of stevedore's equipment in the course of loading a vessel.

Jurisdiction exists by virtue of the General Maritime Law because said cause of action arose out of injuries caused by a ship and reflected a "maritime relationship." Jurisdiction exists by virtue of the Extension Act because the vessel "caused" the aforesaid injury. The presence of the vessel causes loading operations with predictably resultant injuries to maritime workers. In fact, the presence of the vessel resulted in certain loading equipment to become appurtenant to that vessel.

A cause of action for unseaworthiness arose when a longshoreman in the service of the ship was injured while in an area of risk as a result of a defect in an appurtenance of that ship.

V.
Argument

RESPONDENT POSSESSES A CAUSE OF ACTION FOR UNSEAWORTHINESS WHICH CAUSE OF ACTION IS SUBJECT TO THE ADMIRALTY JURISDICTION OF THE FEDERAL COURTS.

The jurisdictional issue has been fully argued in litigants' brief. Respondent's brief properly analyzes both the historical aspects of this question and factors in the case at bar. We believe, however, that some further remarks are in order. Admiralty jurisdiction in the case at bar may be predicated on either the General Maritime Law or the Extension Act.

Under the General Maritime Law all that is required is that a valid cause of action be pleaded, which cause of action has a maritime relation. Jurisdiction in unseaworthiness cases arises out of a maritime status or relation and is therefore recognizable by the maritime substantive law whether it arises on sea or on land.

> *Gutierrez* v. *Waterman Steamship Corp.*, 373 U.S. 206 (1963); *Strika* v. *Netherlands Ministry of Traffic*, 185 F.2d 555 (2d Cir. 1950); *Gebhard* v. *S.S. Hawaiian Legislator*, 425 F.2d 1303 (9th Cir. 1970).

Jurisdiction in the instant case also exists by virtue of the Extension Act. The Act provides that:

> "The Admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damages or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." Act of June 19, 1948, ch. 526, 62 Stat. 496, 46 U.S.C. § 740 (1964).

Traditionally, the word "caused" has been interpreted expansively.

Gutierrez v. *Waterman S.S. Corp.*, supra at 210.

This expansive approach has resulted in the rule that if the faulty land-based equipment which caused the injury complained of was involved in the loadings or unloadings of the vessel, that equipment became an appurtenance of the vessel.

See, e.g., *Huff* v. *Matson Navigation Co.*, 338 F.2d 205 (9th Cir. 1964), *cert denied,* 380 U.S. 943 (1965); *Gebhard* v. *S.S. Hawaiian Legislator,* 425 F.2d 1303 (9th Cir. 1970).

Once the equipment is designated as being "appurtenant", jurisdiction exists.

Gebhard v. *S.S. Hawaiian Legislator,* supra.

It has been noted, however, that the requirement of calling certain equipment "appurtenances" of the vessel has resulted in sometimes peculiar reasoning in lower court opinions.

See Petitioners Brief, at pp. 15-17.

A different interpretation of the word "caused" in the Extension Act could well avoid such peculiarities. As the *Gutierrez* opinion suggests, the word "caused" should be interpreted expansively. If the view were taken that the ship was the primary reason for, or cause of, the dockside activity, then it could be said that the ship "caused" the activity. It could not be disputed that any injury resulting

from such activity would therefore be "caused" by the ship. This rationale is justified by analogy to statistical analysis conducted in other industries which predict, for example, the number of accidental deaths likely to occur during the construction of a building. Although a decision to erect a building may not directly "cause" the death of a construction worker, such a decision results in a statistically predictable number of deaths of construction workers. The decision to construct a building causes a predictably certain number of construction workers to be injured in the course of that construction. Similarly, but for the presence of a ship with its inherently attendant hazards, a statistically predictable number of dockside personnel would not be injured. In both situations, it can be said that the building of a building and the service of a ship at dockside "caused" certain injuries.

Once the existence of jurisdiction is recognized it becomes appropriate to determine whether the respondent possesses a cause of action for unseaworthiness.

The Brief for the Respondent most adequately represents the present status of the law and accurately concludes that Law possesses a cause of action for unseaworthiness. Law was in the service of the ship doing work traditionally done by seamen when he was injured by a piece of equipment not reasonably fit for its intended purpose but which could be classified as an appurtenance of the ship.

> See generally, *Seas Shipping Co.* v. *Sieracki,* supra; *Gutierrez* v. *Waterman S.S. Corp.,* supra.

Respondent's Brief correctly identified the two central issues: was Law in the service of the ship and was Law injured by equipment appurtenant to the ship. In so doing Respondent focused upon the nature of the job being performed by Law at the time his cause of action arose. It was

revealed that Law was intimately involved with the loading and unloading of the ship using equipment directly servicing the ship. Law's very job status involved his being frequently aboard the vessel. Given such facts, it becomes apparent that Law was exposed to the hazards identified in both *Sieracki and Gutierrez.* Liability of the shipowner for the injury caused by the unseaworthy equipment would therefore follow.

Reference to the hazardous nature of Law's occupation seems justified where Law was injured while in the service of the ship and *not remote in time or place* from that ship. It has long been recognized that the doctrine of unseaworthiness was created in response to the especially hazardous conditions surrounding maritime related industries and services.

> See, e.g. *Mahnich* v. *Southern S.S. Co.,* 321 U.S. 96 (1944); *Seas Shipping Co.* v. *Sieracki,* supra at 94, 95 (1946); *Dixon* v. *The Cyrus,* 7 Fed. Cas. 755 (No. 3930) (Pa. 1789).

The shipowner

> "...is in position, as the worker is not, to distribute the loss in the shipping community which receives the service and should bear its cost. These and other considerations arising from the hazards which maritime service places upon men who perform it, rather than any consensual basis of responsibility, have been the paramount influences dictating the shipowner's liability for unseaworthiness as well as its absolute character."
>
> *Seas Shipping Co.* v. *Sieracki,* supra at 94.

> "That the owner seeks to have ... (loading and unloading) ... done with the advantages of more modern divisions of labor does not minimize the worker's hazard and should not nullify his protection."
> Id. at 96.

Statistics verify the existence of hazards present on or about docks during the loading and unloading of vessels. These hazards are especially acute for longshoremen.

> "Longshoremen have one of the highest accident frequency rates in American industry. The rates for longshoremen in the Port of New York are higher than the rates of every other major industry with the possible exception of logging."
> Note, Risk Distribution and Seaworthiness, 75 Yale L.J. 1174, 1186 (1966). See also, National Academy of Sciences, National Research Council, Maritime Cargo Transportation Conference Longshore Safety Survey Report, (1956); New York Shipping Association, Safety Bureau, Annual Accidents (1965); Statistics Reported Under Public Law 85-742, Five Year Comparison of Longshore-Injury Frequency Rates (1970).

However, as all parties have noted, the nature of the hazards to which longshoremen are exposed have been radically altered through the years by virtue of technological advances and specialization of labor.

(Brief for the Petitioners, p. 23).

With such specialization, it has become increasingly difficult to identify those jobs which would be considered work traditionally done by seamen. Similarly, with technological advancement new equipment has become available to assist in serving a vessel dockside. This new equipment has

not been easily identifiable as appurtenant to the ship in the traditional sense. Only the risk of injury has remained comparatively constant through the evolution of ship-servicing techniques. Because of this more or less continual risk exposure, reference to the "area of risk" as a standard of review in applying the doctrine of unseaworthiness seems justified.

> The "area of risk" standard was recognized in Note, *Risk Distribution and Seaworthiness,* 75 Yale L.J. 1174, 1190-92 (1966). Note also that the opinion in *Gutierrez* v. *Waterman S.S. Corp.,* supra at 211-12, speaks in terms of risk exposure.

The courts have applied the "area of risk" standard by means of certain meaningful tests designed to determine the applicability of the doctrine of unseaworthiness. First and foremost, the cause of action must accrue to a person injured while in the service of the ship. This test is not new.

> See, e.g., *Seas Shipping Co.* v. *Sieracki,* supra at 95, 97.

A determination depending upon whether an individual acted for the benefit of the ship encourages uniformity and also has the effect of de-emphasizing the requirement of attempting to analogize a person employed in a modern work classification with a person doing the work "traditionally done by seamen."

Second, the "area of risk" standard assumes the jurisdictional requisite in the extension act which limits admiralty jurisdiction to those causes of action arising not remote in time or place from the ship.

See generally, *Gutierrez* v. *Waterman S.S. Corp.*, supra at 210.

"Remoteness" is ascertained by reference to the "area of risk" surrounding a vessel. In the instant case, it could be decided that Law was in an area of risk as established by statistical analysis and reference to the type of dangers to which Law was exposed.

Compare Chagois v. *Lykes Bros. S.S. Co., Inc.*, 432 F.2d 388 (5th Cir. 1970), cert. pending as No. 70-64, and *Spann* v. *Lauritzen*, 344 F.2d 204 (3rd Cir.), cert. den. 382 U.S. 938 (1965), *with Daniel* v. *Skibs A/S Hilda Knudsen*, 368 F.2d 178 (3rd Cir.), cert. den. 386 U.S. 990 (1966).

Finally, acknowledgement of the significance of the "area of risk" standard de-emphasizes the requirement that the equipment not reasonably fit for its intended use and causing the injury be an "appurtenance" of the vessel. Such a de-emphasis constitutes a recognition that modern loading and unloading operations involve specialized equipment unknow at the inception of the doctrine of unseaworthiness.

See generally Note, Risk Distribution and Seaworthiness, 75 Yale L.J. 1174, 1191 (1966).

If the Admiralty and Maritime Law is capable of fashioning a new remedy when one is needed, striking down state doctrines offensive to the Admiralty and Maritime Law when necessary, and providing fair and equitable treatment to all connected with maritime activity because of inequality of bargaining power, then certainly it is capable of providing justice in a practical world by recog-

nizing that special risks require special protection. This concept is rooted in the bedrock of history.

The law must be active and dynamic with the capability of growth to include technological advance. No one can doubt that the equipment currently in use in dockside activities must of necessity be used to service the vessel. It is the adoption of new principles from technological advances together with the regard for tradition that provides the stability necessary for the administration of justice.

VI.
Conclusion

For the foregoing reasons the American Trial Lawyers Association respectfully asks this Court to recognize that the Admiralty and Maritime Law applicable to this case was developed in response to the hazards inherent in the nature of the work performed by maritime personnel and therefore to affirm the decision rendered by the United States Court of Appeals for the Fifth Circuit.

American Trial Lawyers Association
By: David B. Kaplan, *Chairman of Admiralty Section*

VII.
Certificate of Service

I, David B. Kaplan, representing Amicus Curiae the American Trial Lawyer's Association and as a member of the Bar of the Supreme Court of the United States, hereby certify that on the 13th day of October, 1971, I served three (3) copies of the foregoing Brief on Victory Carriers, Inc., Gulf Stevedore Corp., Inc. and Bill Law by mailing to same in duly addressed envelopes with first class postage prepaid to Hon. George Wood, 510 Van Antwerp Building, Mobile, Alabama 36601, Hon. W. Boyd Reeves, 1101 Merchants National Bank Building, Mobile, Alabama 36602, and Ross Diamond, Jr., 610 Van Antwerp Building, Mobile, Alabama 36601.

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MOTION FILED

OCT 15 1971

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. ~~1092~~ 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL
and
GULF STEVEDORE CORP.,
PETITIONERS

v.

BILL LAW,
RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENT

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v.

BILL LAW,
RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENT

TO THE HONORABLE JUSTICES OF THE COURT:

The American Trial Lawyers Association moves this Honorable Court for leave to file the attached brief in support of the position of the Respondent.

Written consent has been obtained from counsel for all parties and is on file with the Clerk of this Honorable Court.

CERTIFICATE OF SERVICE

I, David B. Kaplan, representing Amicus Curiae the American Trial Lawyer's Association and as a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14th day of October, 1971, I served three (3) copies of the foregoing Motion on Victory Carriers, Inc., Gulf Stevedore Corp, Inc. and Bill Law by mailing to same in duly addressed envelopes with first class postage prepaid to Hon. George Wood, 510 Van Antwerp Building, Mobile, Alabama 36601, Hon. W. Boyd Reeves, 1101 Merchants National Bank Building, Mobile, Alabama 36602, and Ross Diamond, Jr., 610 Van Antwerp Building, Mobile, Alabama 36601.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL and GULF STEVEDORE CORP., *Petitioners*

v.

BILL LAW, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR RECONSIDERATION OF MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE

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MOTION FOR LEAVE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL and GULF STEVEDORE CORP., *Petitioners*

v.

BILL LAW, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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MOTION FOR RECONSIDERATION OF MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE

To The Honorable Judges Of Said Court:

On September 15, 1971, the National Maritime Compensation Committee filed with the Clerk of the Court its Motion for Leave to File a Brief *Amicus Curiae* after the time for filing such a brief had expired under Rule 42. Accompanying this Motion was the Brief *Amicus Curiae*

which was sought to be filed in support of the Petitioners in this cause. Written consent had been obtained from all of the parties to the filing of the Brief *Amicus Curiae* and such consent was filed with the Clerk of the Court.[1]

On October 12, 1971, the Court entered an Order denying the Motion to File the Brief *Amicus Curiae* after the time for filing had expired under Rule 42.

On October 15, 1971, only three days before oral argument was scheduled, the American Trial Lawyers Association filed its Motion for Leave to file a Brief *Amicus Curiae* in support of the Respondent after the time for filing such a brief had expired under Rule 42. At the time of the oral argument on October 18 and 19, 1971, no ruling had been made on this Motion.

On October 26, 1971, this Court entered an Order granting leave to the American Trial Lawyers Association to file its Brief *Amicus Curiae* in support of the Respondent after the time for filing such a brief had expired under Rule 42.

It is respectfully submitted that under these circumstances this Court should reconsider its refusal to permit the National Maritime Compensation Committee to file its Brief *Amicus Curiae* on behalf of the Petitioners. While we have no way of knowing why the original Motion of the National Maritime Compensation Committee to file a Brief *Amicus Curiae* was denied, we had assumed that the Motion was denied because the Brief *Amicus Curiae*

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1. Rather than repeat here the contents of its original Motion for Leave, the National Maritime Compensation Committee incorporates such Motion by reference and respectfully refers the Court to it for a full statement of its interest in the questions involved and of its reasons why leave should be granted.

had not been timely filed under Rule 42. If this was the basis of the Court's denial of the original Motion, it is respectfully submitted that this would no longer be a valid basis for refusing to permit it to be filed. Having granted leave to an *Amicus Curiae* in support of the Respondent to file a brief which was not received by the Clerk of the Court until approximately four weeks after that sought to be filed in support of the Petitioners, untimeliness should no longer be an impediment to the filing of the National Maritime Compensation Committee's Brief *Amicus Curiae*.

We assume that in granting leave to file the Brief *Amicus Curiae* in support of the Respondent, the Court did not recall its earlier order denying leave to file a Brief *Amicus Curiae* in support of the Petitioners. Had the Court recalled its earlier order, we are confident that its own sense of fairness and justice would have caused it to rescind on its own motion the earlier order, and to enter an appropriate order granting leave for the Brief *Amicus Curiae* in support of the Petitioners to be filed by the National Maritime Compensation Committee.

As this Court has already recognized this case involves important questions of substantial concern not only to maritime employees such as the Respondent, but to maritime employers such as the Petitioners as well. Having permitted a Brief *Amicus Curiae* to be filed in support of such employees, it is respectfully submitted that the employers should have the same opportunity to present their views through a Brief *Amicus Curiae* in support of Petitioners.

The National Maritime Compensation Committee therefore respectfully submits that in the interest of justice and

fairness that this Motion for Reconsideration should be granted and leave given to file its heretofore submitted Brief *Amicus Curiae* in support of the Petitioners.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Motion have been served on counsel for all parties herein by depositing the same in a United States mail box with first class air mail postage prepaid, addressed to counsel of record at the following post office addresses on the 29th day of October, 1971.

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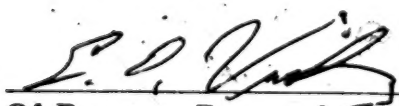

Of Royston, Rayzor & Cook

Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 70-54

VICTORY CARRIERS, INC., S. S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,
Petitioners,

versus

BILL LAW,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR REHEARING

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IN THE
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VICTORY CARRIERS, INC., S.S. SAGAMORE HILL, AND GULF STEVEDORE CORP.,
Petitioners,

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BILL LAW,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR REHEARING

The Petitioner herein respectfully moves that this Court rehear this cause, that this Court request additional briefs and afford opportunity to reargue. As grounds Petitioner states the following:

1. The Maritime Bar is unable to determine the basis of admiralty jurisdiction as a result of the Courts opinion herein.

The Court, in deciding this case, has confused two distinct theories of admiralty tort jurisdiction with the result that if the opinion stands as it is, further litiga-

tion most certainly will follow. On the one hand the opinion appears to simply revitalize the discredited concept that admiralty tort jurisdiction is determined solely by the "locality" or "situs" of the wrong. On the other hand the Court appears to also recognize what the cases and commentators have labled the "locality plus maritime relation" theory.[1] These questions were not touched on in the briefs and were not

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[1]Whether locality is merely one of the tests for determining admiralty jurisdiction or the sole test, has always been subject to doubt and has furnished the thesis of a staggering amount of legal literature. The most famous question posed is "Mr. Benedicts Celebrated Doubt", which questions whether admiralty jurisdiction would extend to an assault between two bathers, which obviously does not involve and has no relation to the maritime industry. 1 E. Benedict, *The Law of American Admiralty*, Sec. 127 (6th Ed. 1940); "Despite the many cases saying that locality is enough for admiralty jurisdiction, this can hardly be regarded as settled." American Law Institute, *Study of The Division of Jurisdiction Between State And Federal Courts*, Sec. 1316 (a), (1969); Comment, *Admiralty Jurisdiction: Airplanes and Wrongful Death in Territorial Waters*, 64 Colum. L. Rev. 1084 (1964); Note, *Admiralty Jurisdiction over Torts*, 16 Harv. L. Rev. 210 (1903); Comment, *Torts Along the Waters Edge: Admiralty or Land Jurisdiction?*, 1968 U. Ill. L. F. 95; 23 Wash. & Lee L. R. 345 (1966); Palaez, *Admiralty Tort Jurisdiction — The Last Barrier*, 7 Duquesne L. Rev. 1 (1968). The lower courts have actually adopted three tests for admiralty jurisdiction. Palaez's article contains an excellent discussion of all three and concludes that the "nexus" test is most appropriate. The "nexus" test, discussed infra, allows admiralty jurisdiction over torts which have some nexus or connection with the purposes of maritime law, the controlling consideration being the torts relation to commerce and navigation. See *Smith v. Guerrant*, 290 F. Supp. 111 (S.D. Tex. 1968) for a detailed examination of all three tests and also concluding that the "nexus" basis is optimum; Note, 60 Mich. L. Rev. 208, (1961) where it is stated "no definitive judicial determination was ever made as to whether locality was the sole and exclusive test, or whether the martime character of the particular tortious act was likewise a relevant jurisdictional consideration."

argued orally by either party. What follows will clearly show the hazards that can be expected to flow from this holding and will demonstrate that rehearing with extensive briefs must be requested by the Court.

The confusion begins when the Court directs its inquiry with the following language.

> "Whether Federal Maritime Law governs this accident in turn depends on whether this is a case within the admiralty and maritime jurisdiction conferred on the District Courts by the Constitution and the Jurisdictional Statutes. More precisely, the threshold issue is whether Maritime Law governs accidents suffered by a longshoreman who is injured on the dock by allegedly defective equipment owned and operated by his stevedore employer. We hold that, under the controlling precedents, federal maritime law does not govern this accident. Nor in the absence of congressional guidance, are we now inclined to depart from prior law and extend the reach of the federal law to pierside accidents caused by a stevedore's pier based equipment."

In the paragraph following the above quoted language the Court cites *Thomas v. Lane*, 23 Fed. Cas. 957 (No. 13,902) (D.C. Maine 1813), and quotes from Mr. Justice Story's opinion: ". . . that the jurisdiction of the admiralty is *exclusively* dependent upon the locality of the act." (emphasis supplied) The language from that case and dictum from another of Justice

Story's opinions, *De Lovio v. Boit*, 7 Fed. Cas. No. 3776, that "jurisdiction is necessarily bounded by locality", were cited for perhaps one hundred years for the rule they embody.

It is suggested that if the Court had ended its opinion with the reference to the well understood, if arbitrary, "locality" test, the maritime bar would have been disappointed but at least would have been able to predict with reasonable certainty the forum in which to pursue their client's interests.[2]

However the Court has gone further and the result can only bring confusion. Following the reference to the *Thomas v. Lane* case the Court cites as controlling authority *Atlantic Transport Co. of West Va. v. Imbrovek*, 234 U.S. 52 (1914). The citation to *Imbrovek* is puzzling for that case is devoted almost entirely to a discussion of the locality plus maritime relation test for admiralty jurisdiction. The theory was first the basis of appellate decision in *Campbell v. H. Hackfield & Co.*, 125 F. 696 (9th Cir. 1903). There a longshoreman brought suit in admiralty for an accident aboard a ship in navigable waters. The Ninth Circuit denied admiralty jurisdiction stating "'the admiralty does not concern itself with non-maritime affairs.'" The judges noted that although decisions had continually indicated

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[2]That the situs or locality test is not as simple in application as might first appear is illustrated by the ". . . confusion and litigation over the difficulty in differentiating between objects or structures which take their character from the land to which they are in some way connected and those which are deemed so related to navigation as to become subjects of maritime jurisdiction", Comment, 23 Wash. & Lee L. Rev. 349 (1966).

that locality was the sole jurisdictional test, in every instance in which jurisdiction was sustained, a maritime relationship existed. Thus, the Court found that although locality remained the true jurisdictional test in the sense that any tort occurring upon navigable waters is within the power of admiralty, it would exercise that power only to take cognizance of *maritime torts*. The locality plus maritime relation test differs from the locality test then, in that it excludes nonmaritime torts committed in a maritime location.

This theory was urged upon the Supreme Court in *Atlantic Transport Co. of West Va. v. Imbrovek*, 234 U.S. 52 (1914). The Court expressly left the question open since it felt that even if "maritime nature" was an additional element of jurisdiction, it was present since,

> "(W)e entertain no doubt that the service in loading and stowing a ship's cargo is of this character. Upon its proper performance depend in large measure the safe carrying of the cargo and the safety of the ship itself; and it is a service absolutely necessary to enable the ship to discharge its maritime duty. Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill; it has become a specialized service devolving upon a class 'as clearly identified with maritime affairs as the mariners.' . . . if more is required than the locality of the wrong in order to give the Court jurisdiction,

> the relation of the wrong to maritime service, to navigation, and to commerce on navigable waters, was quite sufficient."[3]

The test has recently found expression in *Wiper v. Great Lakes Engineering Works*, 340 F. 2d 727 (6 Cir. 1965), and *Hastings v. Mann*, 340 F.2d 910 (4 Cir. 1965).

In the instant case we find this Court quoting from the "locality" cases but then citing *Imbrovek* and going even further to say:

> "In the present case, however, the typical elements of a maritime cause of action are particularly attenuated: Respondent Law was not injured by equipment which was part of the ship's usual gear or which was stored on board, the equipment which injured him was in no way attached to the ship, the fork lift was not under the control of the ship or its crew, and the accident did not occur aboard ship or on the gang plank."

The Court is saying that Bill Law has no "maritime tort", ie, that there is no maritime relation.

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[3] *Imbrovek* provided ammunition to those who opposed the locality test as arbitrary, irrational, and bearing no relation to the purpose of admiralty jurisdiction, as well as a blind following of history. See, e.g., Black, *Admiralty Jurisdiction: Critique and Suggestions*, 50 Colum. L. Rev. 259 (1950); Ryan, *The Amphibious Tort Problems*, 13 Brooklyn L. Rev. 129, (1947); Bruncken, *Tradition and Common Sense in Admiralty*, 14 Marq. L. Rev. 16 (1929).

This Court then has made two findings, (1) that the location of the tort was ashore and (2) that there is no maritime relation. What will surely baffle the reader, however, is why the Court quotes from the cases stating that "locality" is the *exclusive* test of jurisdiction. Similarly, if the Court is not establishing the locality plus basis of jurisdiction why does it go further to find there is no maritime tort since if locality is the exclusive test there is no conceivable reason to look further.

We cannot urge too strongly upon the Court that this is no matter of mere academic interest. Since the Court has chosen to speak in terms of fundamental jurisdictional concepts, there are numerous areas outside the longshore-maritime industry where guidance is required. This case has thus taken on proportions which must not have been anticipated when the opinion was written. For example if the opinion is taken to mean that situs or locality is the exclusive test of jurisdiction what is to happen to the following line of cases?

a. *Chapman v. Grosse Point Farms,* 385 F.2d 962 (6 Cir. 1967) wherein a swimmer who dove off a pier into 18 inches of water brought suit in admiralty. The Sixth Circuit held there was no admiralty jurisdiction even though the accident happened on navigable water.

b. *Smith v. Guerrant,* 290 F. Supp. 111 (S.D. Tex. 1968) in which admiralty jurisdiction was refused where a crane dropped a fork lift machine into navigable waters while trying to move it along a pier.

c. *McGuire v. New York,* 192 F. Supp. 866 (S.D. N.Y. 1961) where a swimmer injured his hand under water at a public bathing beach. Admiralty jurisdiction was denied, the Court saying "(O)nly those torts which have a maritime character" can be brought in admiralty.

d. *Scott v. Eastern Airlines,* 399 F.2d 14 (3 Cir. 1968) is a typically complex aviation disaster occurring on navigable waters within a state. The Court recognized there could be admiralty jurisdiction. If the Court herein is establishing the locality plus maritime relation test as the jurisdictional criteria then what is to happen in the fast developing field of admiralty — aviation law. Can it be said that the death of or injury to an airlines passenger is more maritime in nature than similar injuries to a longshoreman?[4]

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[4]The leading case involving aircraft accidents within the territorial (and navigable) waters of a state is *Weinstein v. Eastern Airlines, Inc.,* 316 F.2d 758 (3 Cir. 1963); See also, *Wilson v. Transocean Airlines,* 121 F. Supp. 85 (N.D. Cal. 1965); *Pearson v. Northeast Airlines,* 309 F.2d 553 (2 Cir. 1962); 309 F.2d 553 (2 Cir. 1962); *Griffith v. United Airlines, Inc.,* 416 Pa. 1, 203 A.2d 766 (1964). Applying the locality test admiralty jurisdiction has been upheld in cases involving water skiers, *King v. Testerman,* 214 F. Supp. 335 (E.D. Tenn. 1963); Where a lamp-post fell from a wharf and struck a seaman aboard a vessel, *McDonald v. Cape Cod Trawling Corp.,* 71 F. Supp. 888 (D.C. Mass. 1947), where the Court upheld admiralty jurisdiction stating that the locality rule applied and that locality was determined ". . . where the last event necessary to make an actor liable for an alleged tort occurs"; *City of Lincoln,* 25 F. 835 (S.D. N.Y. 1885) and *Firemans Fund Inc., Co. v. City of Montrey,* 6 F.2d 893 (N.D. Cal. 1925), Admiralty jurisdiction allowed where piers collapsed and Plaintiff's goods thrown into navigable waters; for contrary holding see; *Thompson v. Chesapeake Yacht Club, Inc.,* 255 F. Supp. 555 (D. Mc. 1966), where admiralty jurisdiction disallowed when Plaintiff fell through a hole in Respondents pier.

As these cases illustrate admiralty jurisdiction has been allowed in numerous and diverse circumstances. In many cases jurisdiction is upheld where the accident has absolutely no relationship to the purposes of admiralty jurisdiction nor to maritime law itself. The situs test would allow suit in admiralty for a simple accident involving swimmers or water skiers but would disallow jurisdiction to a longshoreman such as Bill Law who is an essential element in the maritime industry. In such manner does rigid adherance to ancient precedent pervert the very reason for its existence.

The facts of the instant case present the Court with an opportunity to speak definitively to the problems of admiralty jurisdiction. It is submitted, however, that this cannot be done unless rehearing is granted and the various policies underlying each of the three proposed tests are thoroughly briefed and argued by the parties.

2. Admiralty Tort Jurisdiction Should Depend Upon The Relationship Of The Tort To The Purposes Of Maritime law. Jurisdiction Should Not Be Limited By The Arbitrary Confines Of The "Locality Test", Nor By The Only Slightly Less Arbitrary Confines Of The "Locality Plus Maritime Relation Test".

We have noted earlier that the lower courts have adopted three tests for admiralty jurisdiction. Two of these, the locality test and the locality plus maritime relation test, have been discussed in Section One of this petition and it has been shown that considerable

misunderstanding can be expected if the opinion remains as it stands. The third test for jurisdiction has come to be known as the "nexus" test. These three concepts have been the focal point of a great deal of debate in the lower courts and among legal scholars in the field of maritime law for years.

Generally, the nexus test would allow admiralty tort jurisdiction under similar circumstances that jurisdiction is allowed in cases of maritime contracts. Here, jurisdiction is recognized " . . overe all contracts (wheresoever they may be made or executed, or whatsoever may be the form of the stipulations) which relate to the navigation, business or commerce of the sea . . ."[5]

The nexus test, then, recognizes that the maritime law has developed to meet the special requirements of those endeavors which relate to the "business or commerce of the sea."

Professor Black states:

> "The law of admiralty, or maritime law, may tentatively be defined as a corpus of rules, concepts, and legal practices governing certain centrally important concerns of the business of carrying goods and passengers by water . . . Its tie with a single industry, and its separate, long continued, and international traditions and history mark it off quite distinctly from the relatively interpermeating

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[5] *De Lovio v. Boit*, 7 Fed. Cas. at 444.

branches of shoregoing law — with which, nonetheless, it has numerous relations".[6]

"It arose and exists to deal with problems that call for legal solution, arising out of the conduct of the sea transport industry"[7]

The American Law Institute has expressed a similar policy in its Commentary on Admiralty and Maritime Jurisdiction.

"The Admiralty and Maritime jurisdiction extends to and includes all claims arising out of any maritime transaction or occurance irrespective of where the claim arose or the damage or injury occurred"

"This would make it clear that all transactions and occurrences maritime in fact are included within maritime jurisdiction irrespective of locality. It would be generally informative and would be helpful in reaching the right result in situations such as pierside damage and injury arising out of maritime transactions."[8]

In *Atlantic Transport Co. of West Va. v. Imbrovek*, 234 U.S. 52, 58 L.Ed. 1208 (1914) this Court clearly rec-

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[6]Gilmore and Black, *The Law of Admiralty*, 1, (1957).
[7]Id. at 11.
[8]American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts*, Sec. 1316 (a), (1969). Proposed draft.

ognized that the longshore industry and the workers therein are an essential cog in the commerce of the sea. There it was said:

> "We entertain no doubt that the service in loading and stowing a ship's cargo is of this character . . . it has become a specialized service devolving upon a class 'as clearly identified with maritime affairs' as the mariners' ".

The locality test of admiralty jurisdiction, in any form, ignores the fact that the pier itself is the focal point for the entire maritime industry. It is there that the very substance of that industry, the meeting of ships, cargo and men, takes place, and it is there that the maritime law should be concerned. The locality test illogically and arbitrary divides an entire industry's standard of care.

The nexus test of admiralty jurisdiction would not change the obligations of the Shipowner or the Stevedore Company to provide safe equipment and appliances. They are fully aware that while a forklift machine works on the dock one day, the next day it will be aboard ship and the warranty of seaworthiness is resumed. In *Moragne v. States Marine Lines, Inc.* 398 U.S. 375, 26 L.Ed. 2d 339 (1970) this Court held that the general maritime law recognized a remedy for wrongful death based on unseaworthiness. It was there said:

> "The confidence of people in their ability to predict the legal consequences of their actions

is vitally necessary to facilitate the planning of primary activity and to encourage the settlement of disputes without resort to the courts. However, that confidence is threatened least by the announcement of a new remedial rule to effectuate well-established primary rules of behavior. There is no question in this case of any change in the duties owed by shipowners to those who work aboard their vessels. Shipowners well understand that breach of the duty to provide a seaworthy ship may subject them to liability for injury regardless of where it occurs, and for death occurring on the high seas or in the territorial waters of most States. It can hardly be said that shipowners have molded their conduct around the possibility that in a few special circumstances they may escape liability for such a breach. Rather, the established expectations of both those who own ships and those who work on them are that there is a duty to make the ship seaworthy and that a breach of that federally imposed duty will generally provide a basis for recovery. It is the exceptional denial of recovery that disturbs these expectations. 'If the new remedial doctrine serves simply to reenforce and make more effectual well-understood primary obligations, the net result of innovation may be to strengthen rather than to disturb the general sense of security.' "

These same principals underlie the instant case. The nexus test of admiralty jurisdiction provides a logical

and realistic vehicle for handling maritime injuries whether they occur on the dock or the ship.

In our brief on the merits herein it was felt that it was not necessary to discuss the important policy considerations involved in the three jurisdictional issues here brought to the attention of the Court. The reason for this is obvious. First, the District Court's opinion in granting Summary Judgment was not addressed to these issues; second, the opinion of the Fifth Circuit in reversing the District Court was not concerned with these issues; third, and in fact, none of the Courts of Appeal which have decided cases similar to this have felt it necessary to approach these considerations; fourth; the Petitioner, Victory Carriers, in its brief mentioned the jurisdiction question only in passing and was content merely to cite this Courts' opinion in *Nacirema Operating Co. v. Johnson,* 396 U.S. 212, 90 S.Ct. 347 (1969)

This Court, then, has made a radical departure from the developing maritime law and has done so without briefs of counsel and without argument. It is strongly urged that this opinion will cause more problems than it can possibly solve, that the Court has not fully considered the competing policies involved and that Rehearing should be granted with additional briefs of counsel and re-argument.

CONCLUSION

The opinion of this Court herein is confusing and as a result the bar is unable to determine the proper

basis of admiralty jurisdiction. The imporant issues of policy raised by the Court should be, but have not been briefed by the parties. Therefore it is respectfully urged that Rehearing be granted, that additional briefs be requested and the opportunity to reargue be afforded.

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PROOF OF SERVICE

I, Ross Diamond Jr., one of the attorneys for the Respondent herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the ____ day of Jan. 1972, I served three copies of the foregoing brief of Respondent on Victory Carriers Inc., and Gulf Stevedore Corp., by mailing to same in duly addressed envelopes with first class postage prepaid to Hon. George Wood, 510 Van Antwerp Building, Mobile, Alabama 36601, and to Hon. W. Boyd Reeves, 1101 Merchants National Bank Building, Mobile, Alabama 36602, Attorneys for Petitioners.

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CERTIFICATE OF GOOD FAITH

I, Ross Diamond Jr., one of the attorneys for Respondent, Bill Law, hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

Ross Diamond, Jr.
Counsel for Respondent

Supreme Court, U.S.
FILED
JAN 14 197
E. ROBERT

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. ~~1092~~ 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL
and
GULF STEVEDORE CORP., PETITIONERS

v.

BILL LAW, RESPONDENT

ON PETITION FOR REHEARING

BRIEF ON BEHALF OF AMERICAN TRIAL LAWYERS ASSOCIATION AS AMICUS CURIAE

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Black, Admiralty Jurisdiction: Critique and Suggestions, 50 Col. L. Rev. 259 (1950) 8, 9

Stevens, Erie R.R. v. Tompkins and the Uniform General Maritime Law, 64 Harv. L. Rev. 246 (1950) 7, 8

In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 1092

VICTORY CARRIERS, INC., SS SAGAMORE HILL
and
GULF STEVEDORE CORP., PETITIONERS

v.

BILL LAW, RESPONDENT

ON PETITION FOR REHEARING

BRIEF ON BEHALF OF THE AMERICAN TRIAL LAWYERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITION TO REHEAR

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The American Trial Lawyers Association, Admiralty Section, respectfully prays that this Honorable Court rehear the above-entitled action.

I.
Standing

The American Trial Lawyers Association is a national bar association whose membership exceeds 25,000 lawyers who are primarily engaged in the practice of law on behalf of plaintiffs in personal injury litigation. The admiralty section of this association includes most of the attorneys who specialize in the maritime personal injury law. These attorneys represent seamen, longshoremen and other maritime workers who are engaged in a hazardous industry and, as such, are recognized as having a special status by virtue of legislation and decisions of the courts.

This Association and the people it represents are directly affected by the judicial application of the doctrine of unseaworthiness to dockside personnel injured as a result of stevedore's equipment. More specifically, this Association is vitally concerned with this appeal, not only for the instant case, but also for the effect this result will have on similar cases now existing throughout the country.

As a resolution of the issues in this case will materially affect the outcome of many others, this case assumes a position of major importance to thousands of maritime workers, the maritime industry and the admiralty bar.

The American Trial Lawyers Association, Admiralty Section, has been permitted to file briefs Amicus Curiae with this Honorable Court on behalf of seamen and longshoremen in other cases.

II.
Question Presented

Is it appropriate for this Honorable Court to rehear the case of *Victory Carriers, Inc.* v. *Law*, No. 70-54 (December 13, 1971) where the opinion in that case is contrary to reason and the Constitution?

III.
Summary of Argument

It is appropriate for this HONORABLE COURT to rehear the above-entitled action.

It was decided that federal maritime law would be applied if this case were

> "... within the admiralty and maritime jurisdiction conferred on the district courts by the Constitution and the jurisdictional statutes."

No admiralty and maritime jurisdiction was found and recovery was denied.

The case was in fact within the admiralty and maritime jurisdiction of the federal courts. The Extension of Admiralty Jurisdiction Act, 62 Stat. 496, 46 U.S.C. §740 (1964), expressly granted jurisdiction of the case at bar. The precedent existing at the time the Constitution was adopted also indicates the presence of admiralty and maritime jurisdiction.

Furthermore, it is not at all clear that the substantive maritime law is only applicable within the geographic confines of the admiralty and maritime jurisdiction of the federal courts. The General Maritime Law is a composite of many non-federal contributions from state and pre-Constitution sources. There has never been even a suggestion prior to the December opinion that limitations in federal jurisdiction could also limit the scope of the General Maritime Law.

The "savings to suitors" clause of 28 U.S.C. §1333 (1964), expressly preserves state remedies, including state jurisdiction. Since the above-entitled action was heard under diversity jurisdiction, 28 U.S.C. §1332 (1964), as well as under admiralty and maritime jurisdiction, 28

U.S.C. §1333 (1964), it would seem that the jurisdiction of the diversity court would be as expansive as that of a state court sitting within that federal district. If a cause of action for unseaworthiness were within the jurisdiction of a state court, that cause of action would be within the jurisdiction of the diversity court. Indeed, state courts have exercised jurisdiction and applied the warranty of seaworthiness to the facts at bar.

Significant authority also stands for the proposition that states may add to the rights in the General Maritime Law as well as to the remedies. State courts have in fact applied the warranty of seaworthiness in these circumstances.

In view of the apparent misunderstanding concerning the scope of admiralty and maritime jurisdiction, the scope of state remedial rights and the breadth of state substantive power, it is appropriate for this HONORABLE COURT to rehear the above-entitled action.

IV.
Argument

On December 13, 1971, this HONORABLE COURT ruled that the facts at bar in the above-entitled action did not support a cause of action for unseaworthiness. The Court said that federal maritime law could only apply if the case were within the admiralty and maritime jurisdiction of the federal district court. This case was held to be without said admiralty and maritime jurisdiction.

A. THE FEDERAL DISTRICT COURT DID POSSESS JURISDICTION OF THE CASE.

1. *The Case Is Within The Admiralty And Maritime Jurisdiction Of Federal District Courts.*

Admiralty jurisdiction exists in the case at bar by virtue of the Extension of Admiralty Jurisdiction Act. The Act provides in pertinent part that:

> "The Admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damages or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."
>
> Act of June 19, 1948, ch. 526, 62 Stat. 496, 46 U.S.C. §740 (1964) (hereinafter cited Extension Act).

Traditionally, jurisdictional statutes are not to be read literally and are not to be construed as abstract collections of words. They derive their meaning from their setting in history and practice, with due regard to the consequences of the construction given them.

> *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 364 fn. 20, *reh. denied* 359 U.S. 962 (1959).

Thus, in *Gutierrez* v. *Waterman Steamship Corp.*, 373 U.S. 206 (1963), the Court gave an expansive interpretation of the word "caused" in the Extension Act. Admiralty and maritime jurisdiction was held to extend to causes of action under the warranty of seaworthiness arising ashore. The interpretation was justified upon review of the types of activity engaged in by "seamen." It was understood that "seamen" frequently were ashore in the service of their ship. While ashore "seamen" would be injured by defective things about a ship. It was sufficient, in terms of causation, that the "impact" of the defect was felt ashore at a time and place not remote from the wrongful act which caused said defect.

This expansive approach has resulted in the rule that if the faulty land-based equipment which caused the injury

complained of was involved in the loading or unloading of the vessel, that equipment became appurtenant to the vessel.

> See, e.g., *Huff* v. *Matson Navigation Co.*, 338 F.2d 205 (9th Cir. 1964), *cert. denied*, 380 U.S. 943 (1965); *Gebhard* v. *S. S. Hawaiian Legislator*, 425 F.2d 1303 (9th Cir. 1970).

Once the equipment is designated as being "appurtenant," jurisdiction exists.

> *Gebhard* v. *S.S. Hawaiian Legislator*, supra.

The decisions since *Gutierrez* have consistently recognized that Admiralty and Maritime Jurisdiction extends to injuries caused by an appurtenance of the vessel. The test of whether a piece of equipment is an appurtenance is not whether it is on the dock or on the ship but rather in what type of work it was engaged.

> *Deffes* v. *Federal Barge Lines Inc.*, 361 F.2d 422 (5th Cir. 1962); *Huff* v. *Matson Navigation Co.*, supra; *Spann* v. *Lauritzen*, 344 F.2d 204 (3rd Cir. 1965); *Gebhard* v. *S.S. Hawaiian Legislator*, supra; *Olvera* v. *Michalos*, 307 F. Supp. 9 (S.D. Tex. 1968); *Chagois* v. *Lykes Bros. S.S. Company*, 432 F.2d 388 (5th Cir. 1970).

The machine need not be in physical contact with the vessel but, as with the *Sieracki* seaman, merely "performing . . . a . . . function essential to maritime service . . . ," *Seas Shipping Company* v. *Sieracki*, 328 U.S. 85, 97 (1946), and thus "... in the service of the vessel . . . ," *Alaska S.S. Co.* v. *Petterson*, 347 U.S. 396, 399 (1954). If the machine qualifies as appurtenant then clearly an accident caused thereby is "caused by a ship" within the meaning of the Extension Act.

2. *The Case Is Within The Diversity Jurisdiction Of The Federal District Courts.*

Diversity jurisdiction may be invoked to permit the plaintiff to prosecute a cause of action for unseaworthiness.

The opinion rendered on December 13, 1971, recognized the existence of federal district court diversity jurisdiction under 28 U.S.C. §1332 (1964). It is well settled that admiralty and maritime actions may be subject to diversity jurisdiction.

> *Romero* v. *International Terminal Operating Co.*, supra at 370.

A diversity court must, of course, apply the maritime rights and remedies to which a state court would refer.

> *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1935). But see Stevens, *Erie R.R.* v. *Tompkins* and The Uniform General Maritime Law, 64 Harv. L. Rev. 246 (1950); *Canella* v. *Lykes Bros.*, 174 F.2d 794 (2nd Cir.), *cert. denied* 338 U.S. 859 (1949).

In fact, state legislatures and state courts have provided and applied state remedies to vindicate rights in admiralty.

> *Romero* v. *International Terminal Operating Co.*, supra at 373-74.

The "savings to suitors" clause in 28 U.S.C. §1333 (1964) reflects pre-Constitution state authority and permits state legislatures and courts to preserve maritime rights by means of creating and applying remedies sounding in common law.

> *Romero* v. *International Terminal Operating Co.*, supra at 373-74. See also *Just* v. *Chambers*, 312 U.S. 383 (1941); *The Hamilton*, 207 U.S. 398

(1907). See generally *De Lovio* v. *Boit,* 7 Fed. Cas. 418 (Case No. 3776) (C.C. Mass. 1815).; Stevens, supra at 251.

In particular, state legislatures have provided remedial legislation in the form of jurisdictional grants to state courts which permit the entertainment of suits similar to the one at bar.

See, e.g., *Buljanouic* v. *Grace Lines, Inc.,* 295 N.Y.S. 2d 552, 31 A.D. 2d 614 (1968) where state court exercised jurisdiction over seaworthiness claim of longshoreman injured on pier by shore-based equipment.

The fact that a federal admiralty court does not have jurisdiction of the above-entitled action should not serve to invalidate a state remedy. To the contrary, it has been held that the content of the General Maritime Law controls the scope of federal admiralty and maritime jurisdiction.

See generally *American Insurance Co.* v. *Canter,* 26 U.S. (1 Pet.) 511 (1828); Black, Admiralty Jurisdiction: Critique and Suggestions, 50 Col. L. Rev. 259, 274 (1950).

An opposite approach would create in Congress the ability to deny to states the rights reserved to them under Article III, Section 2.

See generally *De Lovio* v. *Boit,* supra.

Denial could be achieved through the simple refusal of Congress to endow inferior federal courts with admiralty jurisdiction. For this Court to approve of such denial would constitute a serious abridgment of state rights.

> "From the admiralty clause of the Constitution, this Court has drawn probably greater substantive law-making powers than it exercises in any other area of the law. See, e.g., *The Osceola,* 189 U.S. 158, 23 S.Ct. 483, 47 L.Ed. 760. Broad as are the implications of this clause, it does not authorize this Court to decide as a matter of policy, wholly untrammeled by the historic roots of admiralty, what relief may be sought exclusively in the federal admiralty courts and what may be concurrently given by the State courts."
>
> Dissent of Mr. Justice Frankfurter in *Madruga v. Superior Court,* 346 U.S. 556, 566-67 (1954).

The reason for limiting Congressional power to restrict State court jurisdiction by removing federal admiralty jurisdiction is clear. There has been no authoritative suggestion that Congress has granted to federal admiralty courts all jurisdiction capable of being granted under Article III.

> Black, supra at 274. Compare expanded grant of admiralty and maritime jurisdiction in Extension Act with prior grant of admiralty and maritime jurisdiction in 28 U.S.C. §1333 (1964).

Indeed, it must be recognized that Congress is not obligated to extend lower federal court jurisdiction to the limits permitted by the Constitution. Conversely, Congress could well suspend all federal admiralty jurisdiction. Therefore, if Congressional grants of admiralty jurisdiction were held to limit state authority to provide state remedies, the Constitution could not prevent the Congress from wholly quashing the ability of states to provide said remedies by simply eliminating federal admiralty jurisdiction. This

result would contravene time honored understandings of the interstitial nature of the federal system.

De Lovio v. *Boit,* supra; Stevens, supra at 251.

There should be no complaint that the state remedy sought to be enforced relates to jurisdiction.

> See, e.g., *Guarantee Trust Co.* v. *York,* 326 U.S. 99 (1945) where it was held that state statute of limitations which foreclosed the exercise of state court jurisdiction was binding on a diversity court as outcome determinative. See also *Romero* v. *International Terminal Operating Co.,* supra at 362.

B. The Substantive General Maritime Law Permits Recovery On The Facts At Bar.

Even if the opinion rendered on the 13th of December was not based solely on the jurisdictional issue but also on the basis that the nature of the case did not justify the application of the substantive General Maritime Law, the opinion was in error. The substantive content of the General Maritime Law specifically relates to the issues at bar and permits recovery on these facts.

1. *Federal Maritime Law Permits Recovery On These Facts.*

The federal maritime law consists of past federal judicial decisions and Congressional statutes promulgated pursuant to Constitutional standards.

The Lottawanna, 21 Wall. 558 (1875).

The Congress revises and supplements the federal maritime law under the authority of the "arising under" clause of Article III, Section 2 and the "commerce" clause of Article I, Section 8.

> *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U.S. 36 (1943).

The warranty of seaworthiness, however, is principally a creation of federal "judge-made" law and its application has expanded within recent years because of judicial efforts.

> See *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539 (1960) which traces the history of that doctrine.

It may now be said that:

> "Seaworthiness is not limited, . . . to fitness for travel on the high seas; it includes fitness for loading and unloading."
>
> *Gutierrez* v. *Waterman Steamship Corp.*, supra at 213.

A proper application of the doctrine of seaworthiness is:

> ". . . in essence that things about a ship, whether the hull, the decks, the machinery, the tools furnished, the stowage, or the cargo containers, must be reasonably fit for the purpose for which they are to be used."
>
> *Id.*

> ". . . [t]he duty to provide a seaworthy ship and gear, including cargo containers, applies to longshoremen unloading the ship whether they are standing aboard ship or on the pier."
>
> *Id.*, 373 U.S. at 215.

The cases expanding the applicability of the warranty of seaworthiness to facts similar to those at bar are identified in Respondent's Brief and well described therein.

In determining the geographic scope of the warranty of seaworthiness, reference to precedent should be made sparingly and with considerable care. The peculiar nature of the right and remedy involved precludes comparisons with other maritime laws and doctrines. It is clear, for example, that completely different considerations are present when comparing the geographic scope of federal compensation law with that of seaworthiness law.

> See, e.g., *Reed* v. *Steamship Yaka,* 373 U.S. 410 (1963) where federal pre-emptive compensation act was held not to preclude the application of the warranty of seaworthiness in areas where the federal act would apply. The delimiting considerations behind the scope of federal compensation law were distinct from those determining the application of the warranty of seaworthiness. It may hardly be suggested that compensation law can do by implication in this case what it could not do by direct conflict in *Reed.*

Similarly, precedent concerning the provision of an exclusive federal pre-emptive compensation remedy occupying a void created when state compensation remedies were ruled unconstitutional,

> *Nacirema Operating Co.* v. *Johnson,* 396 U.S. 212, 216-217 (1969),

would also seem to be irrelevant in determining the applicability of a non-exclusive alternative federal remedy where no pre-emption is at issue.

2. *The December 13, 1971 Opinion Unnecessarily Restricted The Applicable Law To "Federal" Maritime Law.*

> "The question presented here is whether state law or federal maritime law governs the suit of a longshoreman injured on a pier while driving a forklift truck which was moving cargo that would ultimately be loaded aboard ship."

Mr. Justice Frankfurter wrote in commenting on the "savings to suitors" clause in §9 of the Judiciary Act of 1789 that

> "Whether Congress thereby recognized that there were common law rights in the States as to matters also cognizable in admiralty, or whether it was concerning only with 'saving' to the States the power to use their Courts to vindicate rights deriving from the maritime law to the extent that their common law remedies may be available, is a question on which the authorities do not speak with clarity."
>
> *Caldarola* v. *Eckert,* 332 U.S. 155, 157 (1947). See also *Romero* v. *International Terminal Operating Co.,* supra at 375.

The existence of this question has resulted in the statement that admiralty and maritime law should not be considered only "federal" in nature.

> "Although the corpus of admiralty law is federal in the sense that it derives from the implications of Article III evolved by the Courts, to claim that all enforced rights pertaining to matters maritime are

rooted in federal law is a destructive oversimplification of the highly intricate interplay of the States and the National Government in their regulation of maritime commerce."

Romero v. *International Terminal Operating Co.*, supra at 373.

There are many state rules of law which are both substantive and procedural in nature and which are deemed to be part of the corpus of the General Maritime Law.

". . .the source of law in savings-clause actions cannot be described in absolute terms. Maritime law is not a monistic system. The state and federal governments jointly exert regulatory powers today as they have played joint roles in the development of maritime law throughout our history."

Id., 358 U.S. at 374. See also *Lynn Hirkaldy* v. *Alcoa Chemical Transport Co.*, 1971 A.M.C. 1019 (S.D. Tex. 1970) where state law of products liability was used as part of General Maritime Law in creating both a right and remedy in admiralty.

In *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375 (1970), this Court considered the law of the various states when a uniform cause of action for wrongful death was forged for the General Maritime Law. It is therefore unlikely that any real objection can be posed to lower federal courts which refer to state substantive law when dealing with admiralty matters where the voids of the federal maritime law offer no guidance.

3. *State Contributions to the Substantive General Maritime Law Permit Recovery in the Above-Entitled Action.*

It has been held that state substantive law may be considered in determining whether a cause of action exists under the Merchant Marine Act of 1920, 46 U.S.C. §688 (1964), otherwise known as the Jones Act.

> See, e.g., *Edmond* v. *American Hawaiian S.S. Co.*, 65 N.Y.S. 2d 433, 187 Misc. 723, aff'd 85 N. Y.S. 2d 915, 274 App. Div. 1035 (1946) where a state court held that pleading a Jones Act claim did not prevent the application of state law concerning negligence where that law did not conflict with federal maritime law.

It is not surprising, therefore, that state courts have applied their own standards in determining that the warranty of seaworthiness related to shoreside injuries to longshoremen caused by shoreside equipment.

> See, e.g., *Buljanouic* v. *Grace Lines, Inc.*, supra.

C. THE OPINION OF DECEMBER 13, 1971 MISREPRESENTS THE STATUS OF THE GENERAL MARITIME LAW, AND THE ABOVE-ENTITLED ACTION SHOULD BE REHEARD EVEN IF THE RESULT REACHED IN SAID OPINION IS DEFENSIBLE.

The December opinion will be quite destructive of the uniformity developed heretofore in the corpus of the General Maritime Law.

If the decision is taken to be jurisdictional, substantial conflicts may develop where a party proceeds in admiralty as opposed to at law under the Merchant Marine Act of 1920, 38 Stat. 1185, 46 U.S.C. §688 (1964). In *Hopson* v.

Texaco, Inc., 383 U.S. 262 (1966), this HONORABLE COURT allowed seamen to recover at law for injuries sustained thirty-eight miles inland from the ship while said plaintiffs were in the service of said ship. If the plaintiffs had elected to proceed in admiralty, the opinion of December 13th herein would prevent the court from exercising admiralty and maritime jurisdiction. Uniformity of subject-matter jurisdiction would be destroyed and the election characteristic of the Jones Act effectively quashed.

If this Court were to attempt to distinguish admiralty and maritime jurisdiction under the Jones Act from admiralty and maritime jurisdiction under the warranty of seaworthiness, the Court would effectively reverse its original statement that the scope of admiralty and maritime jurisdiction limits the application of the warranty of unseaworthiness. Furthermore, a decision that admiralty and maritime jurisdiction varied with the type of cause of action prosecuted would have the effect of expanding and contracting such jurisdiction on a purely ad hoc basis. Uniformity would be destroyed.

A denial that admiralty jurisdiction lies herein also compels the consideration of whether or not state remedies exist under the "savings to suitors" clause. Such consideration in turn compels the kind of complex decisions cautioned against being made in *Romero* v. *International Terminal Operation Co.*, supra at 375.

Lastly, if the decision were jurisdictional, serious questions would arise as to the nature of state and federal relationships. The interstitial nature of the federal system would be modified so that Congress would be capable of removing all state powers in admiralty by merely restricting federal admiralty court jurisdiction. The "savings to suitors" clause and the Constitutional balance of admiralty authority recognized therein would be contravened.

Assuming the opinion to be substantive in nature, confusion arises as to the meaning of the terms "loading" and "unloading." The language in *Gutierrez* and the precedent evolving therefrom are in hopeless conflict with the language of the December 13th opinion.

A substantive analysis also compels the consideration of the questions reserved in *Caldarola* and *Romero* concerning the extent to which states are permitted to contribute to the substantive General Maritime Law. These issues are the most difficult of all to resolve and require labors not heretofore spent.

The methodology adopted by the December opinion is itself misleading. This HONORABLE COURT suggested that the substance of the General Maritime Law be limited in application by the Congressional grant of admiralty and maritime jurisdiction. This suggestion, as previously noted, is counter to the position held by substantial authority in the field.

V.
Conclusion

The opinion rendered December 13, 1971 in the above-entitled action is misleading and the case should be reheard. If rehearing is denied and the opinion is permitted to stand, the status of the General Maritime Law will be radically altered. Conflicts will arise in the state and federal courts concerning the scope of admiralty jurisdiction, and victims of personal injuries will be refused recovery unjustly. The basis of the December opinion was not in fact considered at length by either petitioner or respondent in written or oral argument. Further, the matters discussed in said opinion have been identified and reserved by this Honorable Court on prior occasions. Reason dictates that a full and complete hearing on the issues is justified now.

VI.
Certificate of Service

I, David B. Kaplan, representing Amicus Curiae the American Trial Lawyer's Association and as a member of the Bar of the Supreme Court of the United States, hereby certify that on the 12th day of January, 1972, I served three (3) copies of the foregoing Brief on Victory Carriers, Inc., Gulf Stevedore Corp., Inc. and Bill Law by mailing to same in duly addressed envelopes with first class postage prepaid to Hon. George Wood, 510 Van Antwerp Building, Mobile, Alabama 36601, Hon. W. Boyd Reeves, 1101 Merchants National Bank Building, Mobile, Alabama 36602, and Ross Diamond, Jr., 610 Van Antwerp Building, Mobile, Alabama 36601.

David B. Kaplan
89 State Street
Boston, Massachusetts 02109

VICTORY CARRIERS, INC., ET AL. *v.* LAW

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–54. Argued October 18–19, 1971—
Decided December 13, 1971

State law and not federal maritime law *held* to govern suit by respondent longshoreman who was injured by alleged defect in his stevedore employer's pier-based forklift truck which respondent was operating on the dock to transfer cargo to a point alongside a vessel where it was to be hoisted aboard by the ship's own gear. *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, and *Gutierrez* v. *Waterman S. S. Corp.*, 373 U. S. 206, distinguished. Pp. 204–216.

432 F. 2d 376, reversed.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, MARSHALL, and BLACKMUN, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN, J., joined, *post*, p. 216.

W. Boyd Reeves argued the cause for petitioners. With him on the briefs were *George F. Wood* and *T. K. Jackson, Jr.*

Ross Diamond, Jr., argued the cause for respondent. With him on the brief was *J. Cecil Gardner.*

E. D. Vickery, Dennis Lindsay, Francis A. Scanlan, and *J. Stewart Harrison* filed a brief for the National Maritime Compensation Committee as *amicus curiae* urging reversal.

David B. Kaplan filed a brief for the American Trial Lawyers Association as *amicus curiae* urging affirmance.

MR. JUSTICE WHITE delivered the opinion of the Court.

The question presented here is whether state law or federal maritime law governs the suit of a longshoreman

injured on a pier while driving a forklift truck which was moving cargo that would ultimately be loaded aboard ship.

The facts are undisputed. When the accident happened, respondent Bill Law, a longshoreman employed by Gulf Stevedore Corp. in Mobile, Alabama, was on the pier driving a forklift loaded with cargo destined for the S. S. *Saqamore Hill*, a vessel owned by petitioner Victory Carriers, Inc., which was tied up at the pier. Law had picked up the load on the dock and was transferring it to a point alongside the vessel where it was to be subsequently hoisted aboard by the ship's own gear. The forklift was owned and under the direction of his stevedore employer. As Law returned toward the pickup point, the overhead protection rack of the forklift came loose and fell on him. He subsequently brought an action in a federal District Court against the ship and Victory Carriers, Inc., claiming that the unseaworthiness of the vessel and the negligence of Victory had caused his injuries. His claim invoked both the diversity jurisdiction of the District Court under 28 U. S. C. § 1332 and its admiralty and maritime jurisdiction under 28 U. S. C. § 1333. Victory filed a third-party complaint against Gulf for indemnity in the event Victory was held liable to Law. The unseaworthiness claim became the critical issue.[1] On cross motions for summary judgment, the District Court gave judgment for petitioners on the ground that Law was not engaged in loading the vessel and that the doctrine of unseaworthiness did not extend to him. The Court of Appeals reversed. Relying on *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85 (1946), and *Gutierrez* v. *Waterman S. S. Corp.*, 373 U. S. 206

[1] The District Court and the Court of Appeals dealt only with the unseaworthiness claim; the District Court did not pass on the question of whether or not the forklift was in fact defective. 432 F. 2d 376, 378 n. 2 (CA5 1970).

(1963), it held that the fundamental question was whether Law at the time was engaged in loading the *Sagamore Hill* and that since he was so engaged, he should be entitled to prove his allegations of unseaworthiness at a trial. We granted certiorari and now reverse the judgment of the Court of Appeals.

Article III, § 2, cl. 1, of the Constitution of the United States extends the federal judicial power "to all Cases of admiralty and maritime Jurisdiction." Congress has implemented that provision by 28 U. S. C. § 1333 which now provides that the district courts shall "have original jurisdiction, exclusive of the courts of the States, of . . . [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." Under the saving-to-suitors clause of § 1333, the plaintiff was entitled to assert his claims under the diversity jurisdiction of the District Court, as well as under § 1333 itself, cf. *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406, 410–411 (1953), but under either section the claim that a ship or its gear was unseaworthy would be rooted in federal maritime law, not the law of the State of Alabama. *Id.*, at 409. Whether federal maritime law governed this accident in turn depends on whether this is a case within the admiralty and maritime jurisdiction conferred on the district courts by the Constitution and the jurisdictional statutes. More precisely, the threshold issue is whether maritime law governs accidents suffered by a longshoreman who is injured on the dock by allegedly defective equipment owned and operated by his stevedore employer. We hold that under the controlling precedents, federal maritime law does not govern this accident. Nor, in the absence of congressional guidance, are we now inclined to depart from prior law and extend the reach of the federal law to pier-side accidents caused by a stevedore's pier-based equipment.

The historic view of this Court has been that the maritime tort jurisdiction of the federal courts is determined by the locality of the accident and that maritime law governs only those torts occurring on the navigable waters of the United States. Maritime contracts are differently viewed, but as Mr. Justice Story remarked long ago:

> "In regard to torts I have always understood, that the jurisdiction of the admiralty is exclusively dependent upon the locality of the act. The admiralty has not, and never (I believe) deliberately claimed to have any jurisdiction over torts, except such as are maritime torts, that is, such as are committed on the high seas, or on waters within the ebb and flow of the tide." *Thomas* v. *Lane*, 23 F. Cas. 957, 960 (No. 13,902) (CC Me. 1813).

The view has been constantly reiterated.[2]

> "The general doctrine that in contract matters admiralty jurisdiction depends upon the nature of the

[2] *Waring* v. *Clarke*, 5 How. 441, 463–464 (1847); *New Jersey Steam Navigation Co.* v. *Merchants' Bank*, 6 How. 344, 394 (1848); *The Propeller Commerce*, 1 Black 574, 579 (1862); *The Plymouth*, 3 Wall. 20, 33 (1866); *The Rock Island Bridge*, 6 Wall. 213, 215 (1867); *The Belfast*, 7 Wall. 624, 637 (1869); *Ex parte Easton*, 95 U. S. 68, 72 (1877); *Leathers* v. *Blessing*, 105 U. S. 626, 630 (1882); *Ex parte Phenix Insurance Co.*, 118 U. S. 610, 618 (1886); *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388, 397 (1886); *Panama R. Co.* v. *Napier Shipping Co.*, 166 U. S. 280, 285 (1897); *The Blackheath*, 195 U. S. 361, 367 (1904); *Cleveland Terminal & Valley R. Co.* v. *Cleveland S. S. Co.*, 208 U. S. 316, 319 (1908); *Martin* v. *West*, 222 U. S. 191, 197 (1911); *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 59–60 (1914); *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U. S. 469, 476 (1922); *T. Smith & Son* v. *Taylor*, 276 U. S. 179, 181 (1928); *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, 318 U. S. 36, 41 (1943); *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406, 409 (1953); *Kermarec* v. *Compagnie Generale Transatlantique*, 358 U. S. 625, 628 (1959); *Hess* v. *United States*, 361 U. S. 314, 318 n. 7 (1960); *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U. S. 352, 360–361 (1969);

transaction and in tort matters upon the locality, has been so frequently asserted by this court that it must now be treated as settled." *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U. S. 469, 476 (1922).

The maritime law was thought to reach "[e]very species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters . . . ." *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 60 (1914). But, accidents on land were not within the maritime jurisdiction as historically construed by this Court.[3] Piers and docks were consistently deemed

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Nacirema Operating Co. v. *Johnson*, 396 U. S. 212, 214–215 (1969); *Thomas* v. *Lane*, 23 F. Cas. 957, 960 (No. 13,902) (CC Me. 1813) (Story, J.); *De Lovio* v. *Boit*, 7 F. Cas. 418, 420 (No. 3,776) (CC Mass. 1815) (Story, J.); *Lake Shore & M. S. R. Co.* v. *The Neil Cochran*, 14 F. Cas. 949, 950 (No. 7,996) (ND Ohio 1872); *The Ottawa*, 18 F. Cas. 906, 907 (No. 10,616) (ED Mich. 1872); *Holmes* v. *O. & C. R. Co.*, 5 F. 75, 77 (Ore. 1880); *The Arkansas*, 17 F. 383, 384 (SD Iowa 1883); *The F. & P. M. No. 2*, 33 F. 511, 513 (ED Wis. 1888); *The H. S. Pickands*, 42 F. 239, 240 (ED Mich. 1890); *Hermann* v. *Port Blakely Mill Co.*, 69 F. 646, 647 (ND Cal. 1895); *The Strabo*, 90 F. 110, 113 (EDNY 1898); *Chapman* v. *City of Grosse Pointe Farms*, 385 F. 2d 962, 963 (CA6 1967); *Scott* v. *Eastern Air Lines, Inc.*, 399 F. 2d 14, 31 (CA3 1967) (concurring opinion); *Fireman's Fund American Insurance Co.* v. *Boston Harbor Marina, Inc.*, 406 F. 2d 917, 919 (CA1 1969); *Penn Tanker Co.* v. *United States*, 409 F. 2d 514, 518 (CA5 1969). "The jurisdiction of courts of admiralty . . . matters of contract, depends upon the nature and character of the contract; but in torts, it depends entirely on locality." *Philadelphia, Wilmington, & Baltimore R. Co.* v. *Philadelphia & Havre de Grace Steam Towboat Co.*, 23 How. 209, 215 (1860). "In [maritime] torts . . . jurisdiction [of federal admiralty courts] depends solely upon the place where the tort was committed, which must have been upon the high seas or other navigable waters." *State Industrial Comm'n* v. *Nordenholt Corp.*, 259 U. S. 263, 271 (1922).

[3] *The Plymouth*, *supra*; *The Troy*, 208 U. S. 321 (1908); *Phoenix Construction Co.* v. *The Steamer Poughkeepsie*, 212 U. S. 558 (1908); *T. Smith & Son* v. *Taylor*, *supra*; *Rodrigue* v. *Aetna Casualty & Surety Co.*, *supra*, at 360; *Hastings* v. *Mann*, 340 F. 2d 910 (CA4),

extensions of land;[4] injuries inflicted to or on them were held not compensable under the maritime law. The *Plymouth*, 3 Wall. 20, 36 (1866); *Ex parte Phenix Insurance Co.*, 118 U. S. 610, 618–619 (1886); *Johnson* v. *Chicago & Pacific Elevator Co.*, 119 U. S. 388, 397 (1886); *Cleveland Terminal & Valley R. Co.* v. *Cleveland S. S. Co.*, 208 U. S. 316, 320 (1908). The gangplank has served as a rough dividing line between the state and maritime regimes.

In defense of this boundary and the exclusive jurisdiction of the maritime law, the Court twice rejected congressional efforts to apply state workmen's compensation statutes to shipboard injuries suffered by maritime workers and longshoremen.[5] Accepting these decisions, Congress passed the Longshoremen's and Harbor Work-

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cert. denied, 380 U. S. 963 (1965). "When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer [*sic*] must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied." *State Industrial Comm'n* v. *Nordenholt Corp.*, *supra*, at 272–273.

[4] *Nacirema Operating Co.* v. *Johnson*, *supra*, at 214–215; *Swanson* v. *Marra Bros., Inc.*, 328 U. S. 1, 6 (1946); *Minnie* v. *Port Huron Terminal Co.*, 295 U. S. 647, 648 (1935); *T. Smith & Son* v. *Taylor*, *supra*, at 182; *State Industrial Comm'n* v. *Nordenholt Corp.*, *supra*, at 275; 1 E. Benedict, The Law of American Admiralty §§ 28, 29 (6th ed, 1940); G. Gilmore & C. Black, The Law of Admiralty §§ 6–46, 7–17 (1957); G. Robinson, Handbook of Admiralty Law in the United States § 11 (1939).

[5] *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149 (1920); *Washington* v. *W. C. Dawson & Co.*, 264 U. S. 219 (1924). These congressional attempts were sparked by an earlier Supreme Court decision, *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205 (1917), which had held unconstitutional a New York workmen's compensation law as applied to a stevedore injured on the gangplank of a ship.

ers' Compensation Act [6] in 1927, providing a system of compensation for longshoremen injured on navigable waters but anticipating that dockside accidents would remain under the umbrella of state law and state workmen's compensation systems. *Nacirema Operating Co.* v. *Johnson*, 396 U. S. 212, 217–219 (1969); *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, 256–257 (1940). The relative roles of state and federal law nevertheless remained somewhat confused on the seaward side of the pier.[7] But shoreward, absent legislation, the line held

[6] 44 Stat. 1424, 33 U. S. C. §§ 901–950. The Act's coverage is limited to those injuries and deaths "occurring upon the navigable waters of the United States (including any dry dock)." 33 U. S. C. § 903 (a).

[7] This confusion may be traced to the Court's modifying the doctrine of *Southern Pacific Co.* v. *Jensen*, *supra*, by preserving certain state remedies for accidents and deaths occurring on navigable waters. See *Western Fuel Co.* v. *Garcia*, 257 U. S. 233 (1921); *Grant Smith-Porter Ship Co.* v. *Rohde*, *supra*; *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244 (1941); *Davis* v. *Dept. of Labor and Industries*, 317 U. S. 249 (1942); *Calbeck* v. *Travelers Insurance Co.*, 370 U. S. 114 (1962). All of these cases of overlapping state-federal jurisdiction have occurred on the seaward side of the *Jensen* line, however. The Court early upheld the power of States to provide workmen's compensation to longshoremen injured by accidents occurring on the dock, under the theory that since the pier is part of the land, application of state law here would not conflict with the uniform federal maritime law applied on navigable waters. *State Industrial Comm'n* v. *Nordenholt Corp.*, *supra*. In *Nacirema Operating Co.* v. *Johnson*, *supra*, the Court held that by limiting coverage under § 3 (a) of the Act, 33 U. S. C. § 903 (a), to accidents occurring "upon . . . navigable waters," Congress had not intended to cover accidents which occurred on piers permanently affixed to the shore: "*Calbeck* made it clear that Congress intended to exercise its full jurisdiction seaward of the *Jensen* line and to cover all injuries on navigable waters, whether or not state compensation was also available in particular situations. . . . But removing uncertainties as to the Act's coverage of injuries occurring on navigable waters is a far cry from construing the Act to reach injuries on land traditionally within the ambit of state compensation acts." 396 U. S., at 220–221.

fast. The Court refused to permit recovery in admiralty even where a ship or its gear, through collision or otherwise, caused damage to persons ashore or to bridges, docks, or other shore-based property. *The Plymouth, supra; Cleveland Terminal & Valley R. Co.* v. *Cleveland S. S. Co., supra; The Troy*, 208 U. S. 321 (1908); *Martin* v. *West*, 222 U. S. 191 (1911).

Congress was dissatisfied with these decisions and passed the Admiralty Extension Act of 1948 specifically to overrule or circumvent this line of cases.[8] The law as enacted provided that "[t]he admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." 62 Stat. 496, 46 U. S. C. § 740. The statute survived constitutional attack in the lower federal courts[9] and was applied without question by this

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[8] 62 Stat. 496, 46 U. S. C. § 740. The House Report on the Admiralty Extension Act stated that the Act was being passed to remedy the "inequities" of cases such as *Cleveland Terminal & Valley R. Co., supra; The Troy, supra;* and *Martin* v. *West, supra,* which had held there was no admiralty jurisdiction to provide a remedy for damage done by ships on navigable water to land structures. H. R. Rep. No. 1523, 80th Cong., 2d Sess., 2 (1948). Congress had also passed the Jones Act, 41 Stat. 1007, 46 U. S. C. § 688, providing a statutory remedy for members of a ship's crew injured in the course of their employment. The Act covered crewmen injured ashore as well as aboard and was considered by this Court an extension of the ancient remedy of maintenance and cure which itself was a traditional and important exception to the usual rule that maritime law does not provide remedies for injuries on land. *O'Donnell* v. *Great Lakes Dredge & Dock Co., supra.* Longshoremen, of course, are not covered by the Jones Act.

[9] *United States* v. *Matson Nav. Co.*, 201 F. 2d 610, 614–616 (CA9 1953); *American Bridge Co.* v. *The Gloria O*, 98 F. Supp. 71, 73–74 (EDNY 1951); *Fematt* v. *City of Los Angeles*, 196 F. Supp. 89, 93 (SD Cal. 1961).

Court in *Gutierrez, supra,* to provide compensation for a longshoreman injured on a dock by defective cargo containers being unloaded from a ship located on navigable waters. No case in this Court has sustained the application of maritime law to the kind of accident that occurred in this case. *State Industrial Comm'n* v. *Nordenholt Corp.*, 259 U. S. 263 (1922), has not been overruled. There, the Court held that compensation for a longshoreman injured when he slipped on a dock while stacking bags of cement which had been unloaded from a ship was governed by local law, not federal maritime law.

It is argued, however, that if a longshoreman may recover for unseaworthiness if injured on a ship in the course of the unloading process, *Seas Shipping Co.* v. *Sieracki, supra,* and if he has an unseaworthiness claim for injuries sustained on the pier and caused by the ship's unloading gear, *Gutierrez, supra,* he is also entitled to sue in admiralty when he is injured on the dock by his own employer's equipment at the time he is engaged in the service of a ship located on navigable waters. *Sieracki, supra,* however, did not call into question the extent of federal admiralty and maritime jurisdiction since the accident there occurred on navigable waters.[10] And in *Gutierrez, supra,* federal admiralty jurisdiction was clearly present since the Admiralty Extension Act on its face reached the injury there involved. The decision in *Gutierrez* turned not on the "function" the stevedore was performing at the time of his injury but, rather, upon the fact that his

[10] In *Sieracki,* the Court concluded:

"[F]or injuries incurred while working on board the ship in navigable waters the stevedore is entitled to the seaman's traditional and statutory protections, regardless of the fact that he is employed immediately by another than the owner. For these purposes he is, in short, a seaman because he is doing a seaman's work and incurring a seaman's hazards." 328 U. S., at 99 (footnote omitted).

injury was caused by an appurtenance of a ship, the defective cargo containers, which the Court held to be an "injury, to person . . . caused by a vessel on navigable water" which was consummated ashore under 46 U. S. C. § 740. The Court has never approved an unseaworthiness recovery for an injury sustained on land merely because the injured longshoreman was engaged in the process of "loading" or "unloading." [11] *Nacirema Operating Co.* v. *Johnson*, 396 U. S., at 223, a case decided several years after *Gutierrez*, makes this quite clear:

> "There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the Extension Act to amend the Longshoremen's Act would not effect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act."

See also *Rodrigue* v. *Aetna Casualty & Surety Co.*, 395 U. S. 352, 360 (1969).

We are not inclined at this juncture to disturb the existing precedents and to extend shoreward the reach of the maritime law further than Congress has approved. We are dealing here with the intersection of federal and

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[11] In *Gutierrez*, the Court concluded that *"things about a ship,* whether the hull, the decks, the machinery, the tools furnished, the stowage, or the cargo containers, must be reasonably fit for the purpose for which they are to be used." 373 U. S., at 213 (emphasis added). In *Alaska S. S. Co.* v. *Petterson*, 347 U. S. 396 (1954), aff'g 205 F. 2d 478 (CA9 1953), and *Rogers* v. *United States Lines*, 347 U. S. 984 (1954), rev'g 205 F. 2d 57 (CA3 1954), the Court decided without opinion that an unseaworthiness recovery would be possible to a longshoreman injured by equipment brought aboard ship by the stevedore company. In both these cases, the accident occurred on navigable water: both longshoremen were injured while in the hold of a ship by defective apparatus attached to the ship's gear.

state law. As the law now stands, state law has traditionally governed accidents like this one. To afford respondent a maritime cause of action would thus intrude on an area that has heretofore been reserved for state law, would raise difficult questions concerning the extent to which state law would be displaced or pre-empted, and would furnish opportunity for circumventing state workmen's compensation statutes. In these circumstances, we should proceed with caution in construing constitutional and statutory provisions dealing with the jurisdiction of the federal courts. As the Court declared in *Healy* v. *Ratta*, 292 U. S. 263, 270 (1934), "The power reserved to the states, under the Constitution, to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judiciary sections of the Constitution. . . . Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [a federal] statute has defined." See also *Romero* v. *Int'l Terminal Operating Co.*, 358 U. S. 354, 379–380, and 408 (BRENNAN, J., dissenting and concurring) (1959).

That longshoremen injured on the pier in the course of loading or unloading a vessel are legally distinguished from longshoremen performing similar services on the ship is neither a recent development nor particularly paradoxical. The maritime law is honeycombed with differing treatment for seamen and longshoremen, on and off the ship,[12] and affirmance of the Court of Appeals

[12] The Longshoremen's and Harbor Workers' Compensation Act does not cover seamen (who are defined there as "master[s] or member[s] of a crew of any vessel," 33 U. S. C. § 903 (a)(1)), and the compensation remedy provided by the Longshoremen's Act is a stevedore's exclusive remedy against his employer for shipboard injuries. 33 U. S. C. § 905. Representatives of maritime employees

would not equalize the remedies that both this Court and Congress have recognized are available to longshoremen injured on navigable waters and those injured ashore, whether in service of a ship or not.[13] In part, this differential treatment stems from the geographical and historical accident that personal injuries on land are covered, for the most part, by state substantive law while such injuries on navigable water are generally governed by federal maritime law. These two bodies of law do overlap and interpenetrate in some situations, and the amphibious nature of the longshoreman's occupation creates frequent taxonomic problems. In the present case, however, the typical elements of a maritime cause of action are particularly attenuated: respondent Law was not injured by equipment that was part of the ship's usual gear or that was stored on board, the equipment

successfully opposed the efforts of Congress to include seamen under the Longshoremen's Act, see *Nogueira* v. *New York, New Haven & Hartford R. Co.*, 281 U. S. 128, 136 (1930); *Warner* v. *Goltra*, 293 U. S. 155, 159–160 (1934), since seamen preferred to remain free to proceed against their employer under the Jones Act, 41 Stat. 1007, 46 U. S. C. § 688, and under suits for unseaworthiness and/or maintenance and cure. The latter remedy has traditionally been available to seamen but not to longshoremen, *Weiss* v. *Central R. Co.*, 235 F. 2d 309, 311 (CA2 1956), and the Court has stated that the remedies of an employee covered by the Longshoremen's Act and those of a seaman covered under the maritime doctrine of maintenance and cure are mutually exclusive. *Norton* v. *Warner Co.*, 321 U. S. 565, 570 (1944). The Jones Act gives seamen, at their election, the benefit of the provisions of the Federal Employers' Liability Act, 35 Stat. 65, 45 U. S. C. § 51 *et seq.* Longshoremen now have no such election. *Swanson* v. *Marra Bros., Inc.*, 328 U. S., at 7. Although longshoremen may not obtain maintenance and cure, there are certain circumstances under which they may recover for injuries caused by unseaworthiness whether the accident occurred on board ship, *Seas Shipping Co.* v. *Sieracki, supra,* or on the dock, *Gutierrez* v. *Waterman S. S. Corp., supra.*

[13] See, *e. g., Nacirema Operating Co.* v. *Johnson,* 396 U. S., at 217–220.

that injured him was in no way attached to the ship, the fork lift was not under the control of the ship or its crew, and the accident did not occur aboard ship or on the gangplank. Affirmance of the decision below would raise a host of new problems as to the standards for and limitations of the applicability of maritime law to accidents on land.[14] At least in the absence of explicit congressional authorization, we shall not extend the historic boundaries of the maritime law.

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[14] The Fifth Circuit's expansive definition of loading (432 F. 2d, at 384) would be difficult to delimit. Already, summary judgment has been denied the shipowner where a warehouseman sued on an unseaworthiness theory after he had been injured by a power shovel he was using to transfer grain from a railroad car to a warehouse where it would be subsequently taken on board a ship. *Olvera* v. *Michalos*, 307 F. Supp. 9 (SD Tex. 1968). Summary judgment has also been denied when a longshoreman brought an unseaworthiness suit after he had been injured inside a pier shed; the "squeeze lift" truck he was driving struck an unidentified object on the shed floor causing the steering wheel to spin around and shatter plaintiff's wrist. *McNeil* v. *A/S Havtor*, 326 F. Supp. 226 (ED Pa. 1971). The attempt to define the process of "loading" for purposes of determining whether a longshoreman injured on shore can recover on an unseaworthiness claim has produced substantial confusion in the lower courts; the cases are impossible to rationalize. Denying compensation: *Forkin* v. *Furness Withy & Co.*, 323 F. 2d 638 (CA2 1963), *McKnight* v. *N. M. Paterson & Sons*, 286 F. 2d 250 (CA6 1960), cert. denied, 368 U. S. 913 (1961); *Henry* v. *S. S. Mount Evans*, 227 F. Supp. 408 (Md. 1964); *Sydnor* v. *Villain & Fassio e Compania*, 323 F. Supp. 850 (Md. 1971). Awarding compensation or denying summary judgment for defendant: *Spann* v. *Lauritzen*, 344 F. 2d 204 (CA3), cert. denied, 382 U. S. 938 (1965); *Chagois* v. *Lykes Bros. S. S. Co.*, 432 F. 2d 388 (CA5 1970); *Olvera* v. *Michalos*, *supra*; *McNeil* v. *A/S Havtor*, *supra*. Reliance upon the gangplank line as the presumptive boundary of admiralty jurisdiction, except for cases in which a ship's appurtenance causes damage ashore, recognizes the traditional limitations of admiralty jurisdiction, see nn. 2 and 3, *supra*, and decreases the arbitrariness and uncertainties surrounding amorphous definitions of "loading." Such uncertainties may prejudice both the longshoreman and the employer.

Without necessarily disagreeing with the proposition that the hazards of the longshoreman's occupation make him especially deserving of a remedy dispensing with proof of fault,[15] we are constrained to note that the longshoreman already has a remedy under state workmen's compensation laws that does not depend upon proving derelictions on the part of his employer. Recovery without proving negligence is not the issue here; nor is it the equities of the injured longshoreman's position as against those of the shipowner who has had and exercises no control whatsoever over the use of the stevedore's equipment on the dock. What is at issue is the *amount* of the recovery, not against a shipowner, but against the stevedore employer. As this case illustrates, the shipowner's liability for unseaworthiness would merely be shifted, with attendant transaction costs, to the stevedore by way of a third-party action for indemnity. *Ryan Stevedoring Co.* v. *Pan-Atlantic S. S. Corp.*, 350 U. S. 124 (1956). The State's own arrangements for compensating industrial accidents would be effectively circumvented.

Perhaps such laws provide inadequate benefits, but we are poorly positioned to conclude that they do or for that reason to give special remedies to longshoremen when other employees operating forklifts for other employers in perhaps equally hazardous circumstances are

[15] A 1956 survey, based on 1954 data, concluded that the stevedoring occupation had a higher injury frequency rate than any other high-hazard industry studied. National Academy of Sciences-National Research Council, Maritime Cargo Transportation Conference, Longshore Safety Survey Report, Longshore Safety Survey: A Survey of Occupational Hazards in the Stevedore Industry 23 (1956). See also U. S. Dept. of Labor, Bureau of Labor Statistics, Handbook of Labor Statistics 1971, p. 345, for a comparison of the work-injury rate (both by severity and frequency) in the marine cargo handling industry with that in other industries. Cf. Note, Risk Distribution and Seaworthiness, 75 Yale L. J. 1174 (1966).

left to the mercies of state law. Claims like these are best presented in the legislative forum, not here.

This is particularly true since extending the constitutional boundaries of the maritime law would not require Congress to make an equivalent extension of the jurisdiction of the federal courts sitting in admiralty. Congress might well prefer not to extend the jurisdiction of the federal courts. On the other hand, if denying federal remedies to longshoremen injured on land is intolerable, Congress has ample power under Arts. I and III of the Constitution to enact a suitable solution.[16]

Reversed.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

Gutierrez v. *Waterman S. S. Corp.*, 373 U. S. 206, involved an injury to a longshoreman while he was on the dock unloading the ship. The injury was not inflicted by a defective appliance of the ship. He merely slipped on loose beans spilled on the dock from defective cargo containers belonging to the ship. Here the longshoreman was engaged in a phase of a loading operation; he was on the dock stacking cargo for loading and the appliance causing the injury belonged to the stevedore company.

The Court of Appeals properly concluded that that work was part of the loading process and that therefore the longshoreman was in the service of the ship. That gives pragmatic, realistic meaning to the concept of load-

[16] Cf., *e. g.*, *The Propeller Genesee Chief* v. *Fitzhugh*, 12 How. 443, 457–458 (1852); *Richardson* v. *Harmon*, 222 U. S. 96, 97 (1911); *Panama R. Co.* v. *Johnson*, 264 U. S. 375, 385–388 (1924); *Detroit Trust Co.* v. *The Thomas Barlum*, 293 U. S. 21, 52 (1934); *Swanson* v. *Marra Bros., Inc.*, *supra*, at 5; *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, *supra*, at 40–41.

ing and avoids the narrow, grudging, hypertechnical definition.

Loading is activity that involves work on the ship and on the dock. Longshoremen are both shipside workers and shoreside workers and move back and forth from deck to dock. At times an individual worker may be using the ship's appliances and a moment later the stevedore's appliances. But the work does not change in character. For example, although prior to his injury Law had normally been involved in loading or unloading, his specific assignments varied. On some days he was assigned to drive a forklift on board ship. On others, such as the day of the injury, he shuttled cargo between various points on the dock during the loading process. Respondent was subject to all the risks and hazards of loading the ship; and the humanitarian policy of the admiralty law has been to allow those who so service the ship to receive the protections usually afforded that class.

Equipment need not belong to the ship to be an appurtenance of the ship; and it may be such even though it belongs to the stevedore. We so held in *Alaska S. S. Co.* v. *Petterson*, 347 U. S. 396,[1] over the strenuous dissent of Mr. Justice Burton, joined by Mr. Justice Frankfurter and Mr. Justice Jackson. The critical question is whether the injury occurred during loading or unloading.[2] We there allowed recovery for injury to a longshoreman which occurred while he was loading the ship on the deck and which was caused by a defective block used by the stevedore company. And we followed

[1] Accord: *Spann* v. *Lauritzen*, 344 F. 2d 204; *Chagois* v. *Lykes Bros. S. S. Co.*, 432 F. 2d 388; *Huff* v. *Matson Navigation Co.*, 338 F. 2d 205; *Thorson* v. *Inland Navigation Co.*, 270 F. 2d 432; *Ace Tractor & Equipment Co.* v. *Olympic S. S. Co.*, 227 F. 2d 274.

[2] See the Appendix to this opinion.

that decision in *Rogers* v. *United States Lines*, 347 U. S. 984, the same three Justices dissenting.

I would adhere to our decisions in the *Petterson* and *Rogers* cases and affirm the judgment of the Court of Appeals.

APPENDIX TO OPINION OF DOUGLAS, J., DISSENTING

This Court's decisions have rather consistently reflected the principle that because loading and unloading of vessels are abnormally dangerous such risks ought to be placed initially upon the shipowners and ultimately passed on through higher prices to the customers of the shipping industry.[1] See *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50 (1926); *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52 (1914). The most well-known explication of this principle was advanced in *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, 93–96 (1946), which held that longshoremen, as well as seamen, were entitled to recover under the doctrine of unseaworthiness for injuries sustained aboard ship:

> "That the liability may not be either so founded or so limited would seem indicated by the stress

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[1] Stevedoring is one of the most accident-prone professions in American industry. According to the National Academy of Sciences-National Research Council, Maritime Cargo Transportation Conference, Longshore Safety Survey 22–23 (1956), hazardous industries have the following accident frequency rates:

Stevedoring	92.3 per million man hours worked
Logging	74.3
Structural Steel Erection	47.5
Saw and Planing Mills	42.0
General Building	37.0

See also New York Shipping Assn., Safety Bureau, Annual Accident (1965).

the cases uniformly place upon its relation, both in character and in scope, to the hazards of marine service which unseaworthiness places on the men who perform it. These, together with their helplessness to ward off such perils and the harshness of forcing them to shoulder alone the resulting personal disability and loss, have been thought to justify and to require putting their burden, in so far as it is measurable in money, upon the owner regardless of his fault. Those risks are avoidable by the owner to the extent that they may result from negligence. And beyond this he is in position, as the worker is not, to distribute the loss in the shipping community which receives the service and should bear its cost.

. . . . . .

"All the considerations which gave birth to the liability and have shaped its absolute character dictate that the owner should not be free to nullify it by parcelling out his operations to intermediary employers whose sole business is to take over portions of the ship's work or by other devices which would strip the men performing its service of their historic protection. The risks themselves arise from and are incident in fact to the service, not merely to the contract pursuant to which it is done. The brunt of loss cast upon the worker and his dependents is the same, and is as inevitable, whether his pay comes directly from the shipowner or only indirectly through another with whom he arranges to have it done. The latter ordinarily has neither right nor opportunity to discover or remove the cause of the peril and it is doubtful, therefore, that he owes to his employees, with respect to these hazards, the employer's ordinary duty to furnish a safe place to

> work, unless perhaps in cases where the perils are obvious or his own action creates them. If not, no such obligation exists unless it rests upon the owner of the ship. Moreover, his ability to distribute the loss over the industry is not lessened by the fact that the men who do the work are employed and furnished by another. Historically the work of loading and unloading is the work of the ship's service, performed until recent times by members of the crew. *Florez* v. *The Scotia*, 35 F. 916; *The Gilbert Knapp*, 37 F. 209, 210; *The Seguranca*, 58 F. 908, 909. That the owner seeks to have it done with the advantages of more modern divisions of labor does not minimize the worker's hazard and should not nullify his protection."

Although subsequent holdings sustaining the applicability of the doctrine of unseaworthiness might alternatively have been grounded in more mechanical rules, the language of the cases has instead been the broader principle explicated in *Sieracki*. For example, in *Reed* v. *The Yaka*, 373 U. S. 410, 414–415 (1963), holding that a longshoreman was not deprived by the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U. S. C. § 901 *et seq.*, of his unseaworthiness remedy merely because the shipowner happened also to be his stevedore-employer, the Court relied upon the policy expressed in *Sieracki*:

> "[W]e pointed out several times in the *Sieracki* case, which has been consistently followed since, that a shipowner's obligation of seaworthiness cannot be shifted about, limited, or escaped by contracts or by the absence of contracts and that the shipowner's obligation is rooted, not in contracts, *but in the hazards of the work.*" (Emphasis added.)

Similarly, the "humanitarian policy" rather than the more mechanical, albeit historical, maritime tests was the starting point in *Waldron* v. *Moore-McCormack Lines*, 386 U. S. 724, 728 (1967):

> "When this Court extended the shipowner's liability for unseaworthiness to longshoremen performing seamen's work, *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85—either on board or on the pier, *Gutierrez* v. *Waterman S. S. Corp.*, 373 U. S. 206, either with the ship's gear or the stevedore's gear, *Alaska S. S. Co.* v. *Petterson*, 347 U. S. 396, either as employees of an independent stevedore or as employees of a shipowner *pro hac vice*, *Reed* v. *The Yaka*, 373 U. S. 410—we noted that 'the hazards of marine service, the helplessness of the men to ward off the perils of unseaworthiness, the harshness of forcing them to shoulder their losses alone, and the broad range of the "humanitarian policy" of the doctrine of seaworthiness,' *id.*, at 413, should prevent the shipowner from delegating, shifting, or escaping his duty by using the men or gear of others to perform the ship's work."

A straightforward application of the *Sieracki* principle to the instant circumstances would clearly warrant recovery by Law, if his allegations are proved at trial, under the doctrine of unseaworthiness. He was driving a forklift laden with cargo which was to be hoisted aboard the S. S. *Sagamore Hill*. As he drove along the dock, a defective overhead rack became disengaged and crashed upon his head. The Court of Appeals correctly concluded that his activity had been part of the loading process and was protected by the *Sieracki* principle. And at least two other circuits have made similar conclusions under analogous conditions. See *Huff* v. *Mat-*

son Navigation Co., 338 F. 2d 205 (CA9 1964); *Spann* v. *Lauritzen*, 344 F. 2d 204 (CA3 1965); see also *Chagois* v. *Lykes Bros. S. S. Co.*, 432 F. 2d 388 (CA5 1970).

By ignoring completely the underlying reasoning of these cases and by focusing instead on the narrow facts involved in each of them, the majority gives short shrift to the policy of distributing loading and unloading risks of personal injury to the users of the shipping industry. The Court places special emphasis on the alignment in this case of three factual elements: (a) an injury to a longshoreman (rather than a seaman), (b) upon a dock (rather than upon a deck), (c) caused by defective equipment supplied by the stevedoring contractor (rather than by the shipowner). Thus the majority finds *Gutierrez* v. *Waterman S. S. Corp.*, 373 U. S. 206 (1963), inapposite even though it involved both the first and second conditions,[2] and presumably would view *Alaska S. S. Co.* v. *Petterson*, 347 U. S. 396 (1954), inapposite even though it concerned both the first and last conditions.[3] But the mere fact that this Court has never decided a controversy composed of these precise elements is not an adequate reason for excepting such a circumstance from the scope of the *Sieracki* principle.

The majority offers three reasons for the exception. First, the Court seems to argue that the *Sieracki* principle has already been limited by *Nacirema Operating Co.* v. *Johnson*, 396 U. S. 212 (1969), holding that Congress did not intend that the Longshoremen's and Harbor Workers' Compensation Act would apply to *any* injury occurring off a ship. In *Johnson*, however, the Court

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[2] Accord: *Rogers* v. *United States Lines*, 347 U. S. 984 (1954); *Spann* v. *Lauritzen*, 344 F. 2d 204 (CA3 1965); *Huff* v. *Matson Navigation Co.*, 338 F. 2d 205 (CA9 1964); *Chagois* v. *Lykes Bros. S. S. Co.*, 432 F. 2d 388 (CA5 1970).

[3] Accord: *Strika* v. *Netherlands Ministry of Traffic*, 185 F. 2d 555 (CA2 1950).

clearly acknowledged that Congress' constitutional maritime power does not cease at the shoreline. *Id.*, at 223–224. And, obviously, the reach of 28 U. S. C. § 1333, conferring upon district courts original admiralty and maritime jurisdiction, as extended by the Admiralty Extension Act of 1948, 62 Stat. 496, 46 U. S. C. § 740, is not governed by the reach of the Harbor Workers' Act. In fact, the Court, while denying a compensation remedy under the Harbor Workers' Act, noted that an action for unseaworthiness would lie against the ship. 396 U. S., at 223 n. 19.

The primary reason offered to support the majority's exception to the *Sieracki* principle is that it is for Congress rather than the judiciary to determine the adequacy of state workmen's compensation laws, which, under the Court's holding, will now be the only remedy available to a longshoreman injured ashore during loading or unloading by pier-based equipment of the stevedoring contractor. See *Nacirema Operating Co.* v. *Johnson, supra.* While Congress, of course, is better equipped for precision analysis than a judicial forum, the courts have not been unaware that state workmen's compensation statutes provide puny awards compared to jury evaluations of personal injuries. See W. Prosser, The Law of Torts 555 (3d ed. 1964). Limited recovery was thought to have been necessary by most state legislatures in order to offset the imposition against an employer's liability regardless of fault. In keeping with admiralty courts' traditional solicitude for those injured in the maritime trade,[4] the Court did not defer to Congress in other instances approving longshoremen's recoveries even though it might also have been argued in those cases that the Harbor Workers' Act or state schemes

[4] See *Dixon* v. *The Cyrus*, 7 F. Cas. 755 (No. 3,930) (Pa. 1789). See also *Peterson* v. *The Chandos*, 4 F. 645, 650 (Ore. 1880).

might have been adequate.[5] No reason is suggested why deference is needed in these circumstances. In any event, referring a litigant to Congress is normally appropriate where the Court is reluctant to accept his invitation to upset an established rule. Inasmuch as the *Sieracki-Petterson-Gutierrez* principle would appear to be the controlling precedent, the appropriate referral to the legislative process ought to be Victory Carriers, not Law.

Finally the majority says that: "Affirmance of the decision below would raise a host of new problems as to the standards for and limitations of the applicability of maritime law to accidents on land." Such problems were quickly brushed aside in *Gutierrez, supra,* at 210, in which "[v]arious far-fetched hypotheticals [were] raised, such as a suit in admiralty for an ordinary automobile accident involving a ship's officer on ship business in port, or for someone's slipping on beans that continue to leak from [defective cargo] bags in . . . Denver." Said the Court: "We think it sufficient for the needs of this occasion to hold that the case is within the maritime jurisdiction under 46 U. S. C. § 740 when . . . it is alleged that the shipowner commits a tort while or before the ship is being unloaded, and the impact of which is felt ashore at a time and place not remote from the wrongful act." As in *Gutierrez,* the accident here occurred on the dock, and the specter of troubling hypotheticals elsewhere, ought not to deter landward extension to loading or unloading injuries on the dock. Moreover, if a bright-line test is desirable, then the *Sieracki* policy would be

[5] *Gutierrez* v. *Waterman S. S. Corp.*, 373 U. S. 206 (1963); *Reed* v. *The Yaka*, 373 U. S. 410 (1963); *Alaska S. S. Co.* v. *Petterson*, 347 U. S. 396 (1954); *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406 (1953); *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85 (1946); *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50 (1926); *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52 (1914).

less offended by a bright line drawn around both the ship and the dock than by a line cast only about the vessel. Statistical evidence suggests that the great bulk of high-risk maritime activity occurs on the ship and the adjoining pier. National Academy of Sciences—National Research Council, Maritime Cargo Transportation Conference, Longshore Safety Survey 75 (1956). See Comment, Risk Distribution and Seaworthiness, 75 Yale L. J. 1174, 1190 (1966).